Legislative history of the National Labor Relations Act, 1935
Washington, D.C. : National Labor Relations Board : [1985]

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Legislative History of the National Labor Relations Act, 1935

Volume II

National Labor Relations Board

A COMMEMORATIVE PUBLICATION

1935 50th Anniversary 1985

Industrial Democracy Under Law

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Volume II

National Labor Relations Board

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*	Guy Farmer	July	1953 - Aug.	1955
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	Albert C. Beeson	Mar.	1954 - Dec.	1954
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FOREWORD

This two-volume Legislative History of the National Labor Relations Act of 1935 is part of a collection of publications reprinted in 1985 on the 50th anniversary of the Act. The other publications in this reprint series are: the two-volume Legislative History of the Labor Management Relations Act of 1947, the two-volume Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, and the four-volume set of the Annual Reports of the National Labor Relations Board from 1936 through 1960.

The republication of these documents will assure their ready availability for legal and historical research into the National Labor Relations Act.

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NATIONAL LABOR RELATIONS BOARD

HEARINGS

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR
UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

FIRST SESSION

ON

S. 1958

A BILL TO PROMOTE EQUALITY OF BARGAINING POWER BETWEEN EMPLOYERS AND EMPLOYEES, TO DIMINISH THE CAUSES OF LABOR DISPUTES, TO CREATE A NATIONAL RELATIONS BOARD, AND FOR OTHER PURPOSES

PART 3

MARCH 21 TO APRIL 2, 1935

Printed for the use of the Committee on Education and Labor

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NATIONAL LABOR RELATIONS BOARD

THURSDAY, MARCH 21, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:30 a. m., in room 318, Senate Office Building, Washington, D. C. Senator David I. Walsh (presiding).

Present: Senators Walsh (chairman), Murray, and Metcalf.

Present also: Senator Robert F. Wagner.

The CHAIRMAN. The committee will please come to order.

Mr. Harnischfeger, will you please come forward and give your full name?

Mr. HARNISCHFEGER. My name is Walter Harnischfeger.

The CHAIRMAN. You reside in Milwaukee, Wis.?

Mr. HARNISCHFEGER. I do.

The CHAIRMAN. Whom are you representing here?

Mr. HARNISCHFEGER. I am a director of the National Manufacturers' Association, a director of the Milwaukee Chamber of Commerce, and I belong to the National Metal Trades Association of Milwaukee.

The CHAIRMAN. Are you representing all of those organizations before this committee?

Mr. HARNISCHFEGER. I am.

The CHAIRMAN. You appear in opposition to the bill now before this committee?

Mr. HARNISCHFEGER. Yes; I do.

The CHAIRMAN. Have you a prepared statement you would like to submit to the committee?

Mr. HARNISCHFEGER. I have.

The CHAIRMAN. We will be glad to receive it and put it in the record, you agreeing to present it in the form of a brief, rather than in oral argument.

Mr. HARNISCHFEGER. Yes; that is correct.

STATEMENT OF WALTER HARNISCHFEGER, MILWAUKEE, WIS.

Mr. HARNISCHFEGER. Mr. Chairman and members of the committee, in addition to representing the associations I have above named, I am president of the Harnischfeger Corporation, which is engaged in the manufacture of heavy machinery and industrial products. Our plant extends over 35 acres and employs in normal time about 1,800 full-time workers. At present we have about 850

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workers on our pay roll, some, however, on part time. The company was started by my father with a mere handful of workers 50 years ago, and during that period could only have grown to its present size by according all workers fair treatment in matters of wages, conditions of work, and opportunities for advancement and larger earnings, and by scrupulous observance and regard for the workers' welfare.

As the representative of such an organization, I am appearing before this committee to register my emphatic opposition to the Wagner labor disputes bill now being heard, and to assign some reasons for that opposition.

In the first place, my opposition is grounded upon the broad general objection that there is no universal demand or necessity for such one-sided legislation at present, and moreover that it seeks to impose Federal regulation and control over a matter that is reserved to and should very properly be exercised by the States.

Specifically, the provisions of the bill will operate to provoke and encourage labor disputes, rather than diminish them, as is the declared purpose of the bill. Its real effect will be to serve as a vehicle for the advancement of the selfish interests of minority labor organizations. That the membership of such organizations constitutes but a small minority of the workers of the country is conceded by every thinking person, and amply supported by the results of elections in the automobile industry's plants. On the premise that this bill is for the benefit of such organizations and in practice of no benefit to workers or industry, it is nothing more than class legislation.

The definition of unfair trade practices is arbitrary, ill-advised, and utterly lacking in mutuality. The practices condemned, if they are, in fact, unfair, should be prohibited to labor as well as employers. Our experience in Wisconsin in the Kohler Co. and other labor disputes leaves no doubt that organized labor in a certain form follows and is committeed to a policy of coercion, yet the bill embraces no prohibition of that unfair trade practice.

The proposed bill seems to be premised on the indisputable assumption that all so-called " company unions " are vicious per se. A mere statement of that assumption demonstrates its inaccuracy and fallacy.

The bill seeks to enact into permanent law the much discussed " majority rule " in labor relations. This rule is wrong in principle and in practice in that it operates to impose majority representation and views upon a minority, and thereby effectually deprive the workers constituting such minority of their freedom of action in matters of bargaining.

It creates one more permanent board with its attendant expenses, thereby constituting a vehicle for further Government participation in and control of intrastate business contrary to constitutional warrant.

The powers invested in such board are arbitrary and so broad that the board in reality takes on dictatorial powers.

Relief from the orders of such board—that is to say, by petition to circuit courts of appeal—will, of necessity, involve so much time and burdensome expense and effort, that for all practical purposes it can be said that the bill denies relief by appeal to persons aggrieved.

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This measure is the second attempt to secure legislation which would in effect impose universal unionism in industry. The original effort of March 1, 1934, never came to vote, but was replaced by Public Resolution No. 44 which created the National Labor Relations Board for a period of 1 year, expiring June 16 next.

The current bill seeks to create a permanent National Labor Relations Board of three members, salaries $10,000 yearly each, each appointed from the public irrespective of possible partisanship, which would be empowered to enforce, through the Federal courts, prohibitions against a long line of unfair labor practices.

This measure contains all of the objectionable features of its predecessor, which impelled industry to marshal a great organized national protest against its passage. Whitney H. Eastman, then president of the Milwaukee Association of Commerce, appeared before the Senate hearing committee to present emphatic testimony against it.

The bill would make it unlawful for employers to " interfere with, restrain, or coerce employees in the exercise of ", the " right to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Judging by the decisions of the present labor board, it is understood that this would give employees the legal right to " assist " labor organizations by means of sympathetic strikes, picketing, boycotting, and other coercive activities; that employees would have the legal right to force employers to " bargain " with them—the Board having ruled that there is no bargaining unless there is a contract.

Since the employer is restricted from " discharging or otherwise discriminating against any employee who has filed charges or given testimony ", the employee is practically licensed to malign his employer, engage in campaigns to incite unrest, and conduct himself in such a way as to make it impossible to maintain morale and discipline in the plant.

A number of " unfair labor practices " are enumerated—certain of which are already forbidden by the N. I. R. A.—which place great restraint upon employers—with none whatsoever as applied to organized labor. This expresses the real purpose of the measure against which industry protests.

It prevents employee organization, except as recognized units of approved organizations, and prohibits the employer from contributing in any way to the organization of his employees independently, thus outlawing company unions on the theory that they are employer-controlled. The employer is permitted, however, to make agreements with an approved organization for a closed shop—the approved organizations to date being affiliates of the American Federation of Labor.

The bill provides that the board may order and conduct elections among employees, certify the names of representatives for collective bargaining and permanently establish the majority rule. This means that employers may be legally compelled to negotiate with professional labor organizers, and independent employees forced to join labor unions at the peril of losing their jobs.

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Employers' violations of the provisions of the measure could be construed as impeding or interfering with the board or its agents in the performance of its duties, and made punishable by a fine of $5,000, imprisonment for a year, or both. The findings of the board as to the facts, if supported by any evidence whatever, would become conclusive and final, not subject to being disturbed by any court. These provisions we regard as unwarranted and un-American.

For these reasons and in the interest of all concerned, the organizations which I represent strongly urge that this legislation be not passed.

The CHAIRMAN. The next witness to appear before us is Mr. Emery. Would you come forward, Mr. Emery, and let us have for the record your name, and whom you represent in this legislation?

STATEMENT OF JAMES A. EMERY, GENERAL COUNSEL, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. EMERY. My full name is James A. Emery, and my position is that of general counsel, National Association of Manufacturers of the United States, representing by their authority in opposition to the proposal before you, the following associations:

Associated Industries of Alabama, Birmingham, Ala.
California Manufacturers Association, San Francisco, Calif.
Colorado Manufacturers & Merchants Association, Denver, Colo.
Manufacturers Association of Connecticut, Hartford, Conn.
Manufacturers Association of Wilmington, Wilmington, Del.
Associated Industries of Florida, Jacksonville, Fla.
Georgia Manufacturers Association, Atlanta, Ga.
Illinois Manufacturers Association, Chicago, Ill.
Indiana Manufacturers Association, Indianapolis, Ind.
Iowa Manufacturers Association, Des Moines, Iowa.
Associated Industries of Kansas, Topeka, Kans.
Associated Industries of Kentucky, Louisville, Ky.
Louisiana Manufacturers Association, New Orleans, La.
Associated Industries of Maine, Portland, Maine.
Associated Industries of Massachusetts, Boston, Mass.
Michigan Manufacturers Association, Detroit, Mich.
Minnesota Employers Association, St. Paul, Minn.
Associated Industries of Missouri, St. Louis, Mo.
Associated Industries of Montana, Butte, Mont.
Nebraska Manufacturers Association, Lincoln, Nebr.
New Hampshire Manufacturers Association, Manchester, N. H.
Manufacturers Association of New Jersey, Trenton, N. J.
Associated Industries of New York State, Buffalo, N. Y.
Ohio Manufacturers Association, Columbus, Ohio.
Associated Industries of Oklahoma, Oklahoma City, Okla.
Manufacturers & Merchants Association of Oregon, Portland, Oreg.
Pennsylvania Manufacturers Association, Philadelphia, Pa.
Associated Industries of Rhode Island, Providence, R. I.
Manufacturers & Employers Association of South Dakota, Sioux Falls, S. Dak.
Tennessee Manufacturers Association, Nashville, Tenn.
Texas State Manufacturers Association, San Antonio, Tex.
Associated Industries of Vermont, Rutland, Vt.
Virginia Manufacturers Association, Richmond, Va.
Federated Industries of Washington, Seattle, Wash.
West Virginia Manufacturers Association, Fairmont, W. Va.
Wisconsin Manufacturers Association, Madison, Wis.
National Metal Trades Association, Chicago, Ill.
National Founders Association, Chicago, Ill.
National Erectors Association, New York, N. Y.
Manufacturing & Merchants Association, Peoria, Ill.

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Manufacturers Association of Hartford County, Hartford, Conn.
Waynesboro Manufacturers Association, Waynesboro, Pa.
Employers Association of North Jersey, Newark, N. J.
Industrial Association, Cincinnati, Ohio.
Citizens Alliance of Duluth, Minn.
Minnesota Employers Association, Minneapolis, Minn.
Employers Association of Massachusetts, Springfield, Mass.
Omaha Manufacturers Association, Omaha, Nebr.

The CHAIRMAN. How many associations are there, approximately?

Mr. EMERY. There are about 50, I think, representing altogether between 60,000 and 70,000 employers of labor in the United States, chiefly in the manufacturing industries, and employing at the present time from 2,000,000 to 2,250,000 men. The figures are somewhat difficult to get under the existing circumstances, but that is an approximate estimate.

The first day of spring, Mr. Chairman, is marked by consideration of an exotic in legislation, which we trust will find little favor in your cultivated consideration.

This bill is the lineal descendant or successor in interest of S. 2926, introduced by Mr. Wagner, March 1, 1934, thereafter amended, subject to elaborate hearings before this committee between March 14 and April 9, 1934, and, in modified form, reported to the Senate May 26. It differs in many material respects from the original proposal and the measure reported by this committee. It contains all its original errors and no remedial improvement either from the hearings, the concessions to argument made by its distinguished author, the modifications made by this committee and reported to the Senate, or the continuing decisions of the courts which, during the past year, have had many occasions to consider and pass upon the principles involved in the measure before you.

What does the pending bill undertake to do, how does it undertake to do it, and how does it differ from the original measure or that submitted to the Senate? We must assume, in an examination of the measure, that changes made in the bill, in the light of criticism and report, are deliberate. Opportunity for mature consideration gives an air of determined purpose to proposals in the light of a year's consideration.

This bill, as we see it, proposes the creation of a National Labor Relations Board as distinguished from the National Industrial Adjustment Board, originally proposed. The Board is now to consist of three members appointed by the President, with the consent of the Senate, where formerly it was to have been composed of 9 members, 3 of whom represented the public, the remaining 6 being drawn from panels respectively of employers and employees. The former measure, as reported, defined four forms of what were termed "unfair labor practices." Such practices, when threatening to lead to a labor dispute that might affect commerce or obstruct its flow, became the subject of notification by the Secretary of Labor to the Board, which thereupon issued and caused to be served upon the employer engaged in such practice a complaint requiring him to appear at a time and place fixed by the Board to answer thereto. The Board possessed the power to amend this complaint prior to the conclusion of taking evidence, while the person complained of was given the right and opportunity to file an answer to the original or amended complaint, to have the assistance of the Board in procuring witnesses,

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the Board possessing the authority to require the production of testimony and the presence of witnesses. If the complaint were sustained, the Board issued a cease and desist order directed to the unfair practice, and, upon failure to obey, undertook to enforce its order through appeal to the Circuit Court of Appeals in the circuit wherein the practice occurred or the defendant resided. The defendant possessed an equal right to review, through the same court, the Board's finding of fact, when sustained by evidence, being conclusive. Neither the original nor the reported bill conform to the declaration of the President of March 1934:

> The Government makes clear that it favors no particular union or particular form of employee organization or representation. The Government's only duty is to secure absolute and uninfluenced freedom of choice without coercion, restraint, or intimidation from any source.

In the consideration of the measure last year, which the committee gave such extended attention, the distinguished Senator from New York, when his attention was called to the propriety of prohibiting coercion from any source, frankly declared, "I think the act ought to be amended just as you suggest; that is, intimidation, when it comes from any source, either a trade organization or a company union, or an employer, ought to be made an unfair labor practice", so we were in agreement on that, and I trust we still are.

Senator WAGNER. No; we are not.

Mr. EMERY. The Senator has changed his mind then with regard to his own suggestion?

Senator WAGNER. The chairman of this committee, by his statement on the floor last June, did as much as anybody to cause me to change my mind about that observation, and I think he is absolutely right. As we study these things reflectively we do change our minds at times.

Mr. EMERY. The bill reported declared it to be an unfair practice for employees to interfere with or coerce employers to the same extent and in the same manner that employers were prohibited from interfering with employees in forming employer organizations or designating representatives.

That is left out of the proposal which is now before this committee.

The pending bill establishes a permanent board of three members, appointed by the President and confirmed by the Senate. It is empowered to prevent any person from engaging in any unfair labor practice "affecting commerce." The unfair practices defined include interference, or restraint or coercion of employees, interference with the right of self-organization, formation, membership in or assistance to labor organizations, collective bargaining through representatives of their own choosing, and engagement in concerted activities or other mutual aid or protection. A second unfair labor practice is domination or interference with any labor organization or financial contribution or other support to it. The employer is permitted, subject to the rules of the Board, to permit employees to confer with him during working hours without loss of pay. That permission does not extend to conference among themselves specifically permitted in the old bill and stricken from the new. Discrimination in regard to hire, tenure, or any term or condition of

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employment, to encourage or discourage membership in any labor organization is forbidden, with an exception permitting agreement with any labor organization making condition of membership in it a prerequisite of employment if it represents a majority of the employees in the collective bargaining unit covered by the agreement. A proviso expressly denying that the employer is bound to enter upon such agreements is omitted from the pending bill.

With respect to the determination of representatives and elections, the new and the old proposal differ essentially. The former establishes as a rule of substantive law, majority representation for all employees for collective bargaining, to the exclusion of individuals and minorities. The old bill authorized the Board only in a dispute threatening to "affect" commerce to investigate and determine who were authorized representatives or to hold an election for that purpose and determine the majority in an appropriate unit of employment.

With the exception of thus determining in a dispute who were the authorized representatives of employees, the old bill limited the power of investigation and authority to issue subpenas to the production of evidence relating to any matter "under complaint" and limited the amendment of complaints to the period during the taking of evidence, and specifically provided for the right to file an answer to the original or amended complaint. The new bill, by section 6 (b), section 10, and section 13, not only grants the power of subpena with respect to the investigation of complaints pending before the board but a general authority of inquisition, including examination at will of books, records, and persons, plans of employment, and employment relations generally, but may amend complaints pending before the board at any time before it issues orders, without provision for notice or hearing on the amended complaint.

The new bill further provides and authorizes the board not merely to enforce cease-and-desist orders but to provide for affirmative action, in its discretion, including restitution. Its cease-and-desist orders are not only enforceable on application to the Circuit Court of Appeals, to which the defendant has equal access for review, but it may appeal to the District Court of the United States, through each district attorney, for restraint of alleged unfair practices. Its orders dismissing complaints are subject to judicial review on the application of the aggrieved complainants equally with its orders sustaining complaints, all of which provisions were unknown to the former bill.

The last is a novel and interesting suggestion.

Those, Mr. Chairman, are the major essential differences between the bill reported by this committee last year, and the bill which is now before it. It is to these essential things that I beg to direct your attention.

With respect to its legal features, if we may discuss those first—because much water has gone over the dam, and I trust the chairman will pardon me for referring to the bill reported out as the "old" bill, when in fact it is only a year old, but the period of a year is now a long time in the history of the United States.

We assert the bill is unsound in law and policy:

1. Because in terms and operating effect it undertakes to regulate local employment relations arising out of acts of production under

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the guise of regulating commerce. Such acts of production and the employment relations arising out of them are reserved to the States under the tenth amendment and denied to the Congress.

2. Assuming for the moment the validity of the method of regulation prescribed, the procedure provided denies due process of law by permitting amendment and enforcement of a complaint without notice to the defendant and permits him to be deprived of valuable rights of liberty and property and damages to be assessed him by orders issued upon amended complaints for which no notice is provided, no opportunity to be heard is given, and by which ultimate orders may be formulated upon declarations of which he has no knowledge. It is equally a denial of due process to authorize an administrative body, even though it were otherwise validly established, to take evidence without regard to established rules of law and to undertake to make findings of fact, founded upon such alleged evidence, conclusive upon a reviewing court.

3. The bill violates the fourth amendment, which guarantees against unreasonable searches and seizures by the inquisitorial power which it grants to the board, its members, and agents, to have access to books, records, and persons, in the absence of any judicial proceeding or any administrative proceeding which it may be authorized to conduct.

4. It violates the seventh amendment by the provisions of section 10 (d), which undertake to authorize the executive body to assess damages, require restitution, and make its findings of fact in such regard conclusive upon the courts.

5. It violates the judiciary section (article III, sec. 1) in that it undertakes to give an executive or administrative body judicial authority in passing final judgment on questions involving matters of civil right, rights of person and property, and make the same enforceable through proceedings in equity in district courts of the United States.

Those are the major propositions I beg to call to the attention of the committee, because we realize they, the members of the committee, have taken a deliberate oath to sustain and enforce the Constitution of the United States. If they are in doubt as to whether, as agents, they may exercise power which is assumed to have been granted to them, they will resolve that doubt before they proceed to act.

I am not going to bore this committee with any lengthy discussion of the first proposition. Its outlines are familiar to this committee. For the past year we have heard much discussion of the extent and nature of the commerce power. I think it agreed among lawyers, and among all legislators that the commerce power is something distinctly different from the power to control and regulate the circumstances and incidents of production; that the commerce power extends to the regulation of intercourse between citizens of the various States and foreign nations and the regulation of the means by which that intercourse is carried on.

I think the state of the law may be well expressed placed in a short phrase repeatedly used by the Supreme Court of the United States, that the control of Congress extends to those acts and things which substantially and directly affect that intercourse. For these it may prescribe the rules.

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Commerce is an entirely distinct and separate thing from production in all its forms and from the relations which arise out of the circumstances of production.

The CHAIRMAN. The same question you are arguing now is being argued again before the Finance Committee on the scope of the N. R. A.

Mr. EMERY. It is, and it will now be argued in the Supreme Court of the United States within this month, in an important case now pending before it.

The CHAIRMAN. What case is that?

Mr. EMERY. That is the so-called "*Belcher*" case, being an appeal from a demurrer sustained by Judge Grubb in the United States District Court of Alabama, the allegations being the general violation of a provision of the Lumber Code with respect to minimum wages and maximum hours. That is at issue before the Supreme Court of the United States. It is docketed for the month of March, and it seems in all likelihood it will be argued by the first of next month, or the end of this month.

I should think the committee would hesitate to act in matters pending, with cases before the Supreme Court of the United States which will have the effect of finally settling issues involved, if there can be doubt about the answer to the principles of this bill in view of the continuous line of decisions for the past 75 years in which the Court has never hesitated in its distinction between commerce and production, or failed to recognize the fact that manufacture does not extend to commerce and must be concluded before commerce can begin.

No more interesting illustration of this principle can be found, Mr. Chairman, than in a case I beg to call to your attention, decided in the past 2 years by a unanimous Court, that is the case of *Utah Power & Light Co.* v. *Pfost* in 286 U. S. 163. It illustrates the distinction very clearly. The Court, after 75 years, still expresses itself in the same language with respect to the distinction between commerce and manufacture, the control of one being in the hands of the State and the control of the other in the hands of Congress. In that case a power company was taxed by the State of Utah upon the production of electrical energy. It resisted the tax on the ground that the energy was delivered in the State of Idaho, flowing in commerce from Utah, and any attempt upon the part of that State to tax it would obviously be a burden on that commerce.

The Supreme Court pointed out that the flow of energy from the stream was mechanical in its nature, and upon passing through the transformer was changed into electrical energy, and that transformation was as much a part of the manufacture as the transformation of a piece of leather hide into shoes, therefore what the State of Utah had done was to tax the act of manufacture, which in no way interfered with the subsequent flow of energy into the different States as an article of commerce. That is typical of 75 years of continuous distinction on this point.

Now, instead of calling the committee's attention to a list of decisions which could easily fill 3 or 4 pages of your already ample record, I prefer to call your attention to an opinion by a very distinguished lawyer who several years ago had occasion to call atten-

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tion to them, no less personage than the present Chief Justice of the Supreme Court of the United States.

In 1926 he was counsel for the American Petroleum Institute, and on that occasion he delivered an opinion before the Federal Oil Conservation Board at a public hearing in Washington on May 27, 1926.

The question awaiting his answer was: Could the Federal Government regulate the production of petroleum in the different States, either as a part of the commerce power, or under the general welfare clause, or under any other power. Mr. Hughes was advising his client in public in presenting his views at that time, and I will say a lawyer of his distinction, integrity, and sincerity can hardly be presumed to have held an opinion then which he would be unlikely to hold now. He does not happen to belong to that class of practitioners of law whose opinions change to fit the circumstances with which they are confronted or the clients who happen to engage them.

I call this opinion to the committee's attention and ask that it be inserted in the record. I think this discussion of all of the principles here involved is uniquely applicable to this legislation and proceeds from an authoritative source, because he has discussed the different cases in this opinion that I would want to place before the committee, and it will avoid the necessity of calling the committee's attention to a long variety of cases which could be discussed to illustrate the principles to which I have reference.

Mr. Hughes said:

> Petroleum lies beneath the surface of the earth. The territory now under consideration is a part of the domain of the State over which the State has sovereign jurisdiction and control except as the State power is limited by the Federal Constitution. Production is not commerce, and the production of petroleum within a State is not interstate commerce. The case of petroleum in this respect appears to be the same as that of coal. As to coal, the Supreme Court in the United States, by Chief Justice Taft, said upon this point in the *United Mine Workers of America* v. *Coronado Coal Co.* (259 U. S. 407, 408):
>
> "Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such." In *Hammer* v. *Dagenhart* (247 U. S. 251, 272) we said: "The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterward shipped or used in interstate commerce make their production a part thereof." *Delaware, L. & W. R. Co.* v. *Yurkonis* (238 U. S. 439). Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce.
>
> Again, it was said by the Supreme Court of the United States in *Oliver Iron Mining Co.* v. *Lord* (262 U. S. 171, 178):
>
> "Mining is not interstate commerce, but like manufacturing it is a local business, subject to local regulation and taxation." *Kidd* v. *Pearson* (128 U. S. 1, 20); *Capital City Dairy Co.* v. *Ohio* (U. S. 439, 444); *Hammer* v. *Dagenhart* (247 U. S. 251, 272); *United Mine Workers* v. *Coronado Coal Co.* (259 U. S. 344, 410). Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the business be conducted in close connection with interstate commerce. *Cornell* v. *Coyne* (192 U. S. 418); *Browning* v. *Waycross* (233 U. S. 16, 22); *Delaware, L. & W. R. Co.* v. *Yurkonis* (238 U. S. 439, 444); *General R. Signal Co.* v. *Virginia* (246 U. S. 500); *Hammer* v. *Dagenhart* (247 U. S. 251, 272); *Arkadelphia Mill Co.* v. *St. Louis Southwestern R. Co.* (249 U. S. 134, 151); *Crescent Cotton Oil Co.* v. *Mississippi* (247 U. S. 129, 136); *Heisler* v. *Thomas Colliery Co.* (260 U. S. 245).
>
> The ore does not enter interstate commerce until after the mining is done.
>
> See also *United Leather Workers' International Union* v. *Herkert & Meisel Trunk Co.* (265 U. S. 457, 464, 465).

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Again, in *Ohio Oil Co.* v. *Indiana* (177 U. S. 190, 211), it is said:

"In view of the fact that regulations of natural deposits of oil and gas and the right of the owner to take them as an incident of title in fee to the surface of the earth, as said by the Supreme Court of Indiana, is ultimately but a regulation of real property, and they must hence be treated as relating to the preservation and protection of rights of an assentially local character."

It may therefore be safely taken for granted that, under the power to regulate commerce, Congress has no constitutional authority to control the mere production of petroleum on lands (other than the Indian lands) within the territory of a State. All plans for requiring unit operation or otherwise, which involve the assertion of such an authority on the part of Congress, do not require discussion. They proceed from an utterly erroneous conception of Federal power. It does not further the policy of conservation to take up the public attention with futile proposals which disregard the essential principles of our system of government.

I am aware that it has been suggested that such Federal power to control production within the States might be asserted by Congress because it could be deemed to relate to the provision for the common defense and the promotion of the general welfare.

Reference is sometimes made, in support of this view, to the words of the preamble of the Federal Constitution. But as Story says:

"The preamble never can be resorted to, to enlarge the powers confided to the general Government or any of its departments. It cannot confer any power per se; it can never amount by implication, to an enlargement of any power expressly given." (1 Story on the Constitution, sec. 462.)

And this statement was approved by the Supreme Court of the United States in *Jacobson* v. *Massachusetts* (196 U. S. 11, 22), where it was said:

"Although that preamble indicates the general purposes for which the people obtained and established the Constitution, it has never been regarded as the source of any substantive power conferred on the Government of the United States, or any of its departments. Such powers embrace only those expressly granted in the body of the Constitution, and such as may be implied from those so granted. Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States, unless delegation of power, or in some power to be properly implied therefrom." (1 Story on the Constitution, sec. 462.)

The suggestion to which I have referred is an echo of an attempt to construe article I, section 8, subdivision 1, of the Constitution of the United States, not as a power "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States", but as conferring upon Congress two distinct powers, to wit, (1) the power of taxation and (2) the power to provide for the common defense and the general welfare. In this view, it has been urged that Congress has the authority to exercise any power that it might think necessary or expedient for the common defense or the other welfare of the United States. Of course, under such a construction, the Government of the United States would at once cease to be one of enumerated powers and the powers of the States would be wholly illusory and would be at any time subject to be controlled in any matter by the dominant Federal will exercised by Congress on the ground that the general welfare might thereby be advanced. That, however, is not the accepted view of the Constitution. (1 Story on the Constitution, secs. 907–908; 1 Willoughby on the Constitution, sec. 22.) The Government of the United States is one of enumerated powers and is not at liberty to control the internal affairs of the States, respectively, such as production within the States, through assertion by Congress of a desire either to provide for the common defense or to promote the general welfare.

This is too elementary to require discussion, and it is impossible to believe that the legal advisers of the board would suggest that it proceed on any different views.

Provision for governmental uses, to meet the needs of the United States as a proprietor, is quite distinct from an attempted regulation or curtailment of production within the States in a general public interest for the purpose of carrying out a policy of conserving oil in the ground so that it may await the economic needs of the country at large in the future. The latter would be the exercise not of the power to tax and to purchase for governmental uses

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but of a power to control production upon private property within the States and subject to the sovereignty of the States, respectively. It is not conceivable that any theory will be advanced by the legal advisers of the Government to support such a course of action however desirable a policy of conservation it may be deemed to be. It is idle under the Constitution to attempt to secure by Federal regulation the curtailment of production or to require unified operations in production by private owners within fields subject to the jurisdiction of the States.

The conservation of oils in the ground within such territory by governmental control of mere production, or the taking of oil out of the ground, is a question for the States so far as such control may constitutionally be exerted under our form of government.

I would like to call attention to the case of *United Leather Workers International Union* v. *Herkert & Meisel Trunk Co.*, which was referred to by Mr. Hughes.

This was an endeavor to procure an injunction by a number of employers in the city of St. Louis, because of a strike called by the leather workers to enforce the demands they had made. They were sought to be enjoined on the ground that the strike had the effect of interfering with production, and therefore interfering with commerce, and consequently was in restraint of trade.

Mr. Justice Taft in sustaining the denial of the injunction on appeal to the Supreme Court, discussed at length the various issues which again are before this committee: Whether strikers, because incidental to the enforcement of their demands, by their withdrawal from their employment, lessens production—does that have such a direct effect upon commerce, because part of the goods which would otherwise have been produced had they been at work, would have moved into commerce—does that make their combination one in restraint of trade?

"If that be true," said Mr. Justice Taft in substance, in commenting on what the lower court had said, "then it would follow that every strike that restrained production that was intended to or might go into commerce between the States, would justify the constant interposition of the United States courts in the enforcement of the antitrust acts."

The CHAIRMAN. That is the very point Mr. Richberg has been arguing before the Finance Committee, claiming that for the purpose of administration of the N. R. A., interstate commerce prevails from the point of production to the outlet, and therefore the N. R. A. should be able to regulate service stations of gas companies, for instance, and department stores, because some of their goods purchased in one State are sold over the counter in another State.

Do you think that dictum of Mr. Justice Taft disposed of that argument?

Mr. EMERY. I am referring here solely to a case in which there is a labor dispute.

Senator WAGNER. Are you speaking of the Coronado case?

Mr. EMERY. No; I am referring to the case of *United Leather Workers International Union* v. *Herkert & Meisel Trunk Co.* (265 U. S. 457).

Senator WAGNER. You remember the second Coronado case?

Mr. EMERY. I remember both of them.

Senator WAGNER. In the second case the court held there was Federal jurisdiction because interference with production was apt to affect interstate commerce.

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Mr. EMERY. If you will pardon me, it was not quite as loosely held as that.

Senator WAGNER. Everything that differs with your point of view is not loose.

Mr. EMERY. Not necessarily, but it often is.

Senator WAGNER. We will put it this way, then. The court did justify Federal intervention in a case which dealt only with the production of coal within a certain State. Isn't that it?

Mr. EMERY. No; that is not the fact upon which the opinion was predicated. I have the opinion here and will be glad to put it in the record if you desire.

Senator WAGNER. What were the facts?

Mr. EMERY. The Court held that the United Mine Workers, scattered all over the United States, was engaged in a combination, the purpose and effect of which was to restrict the mining of coal over a great area with the direct intention of preventing commerce in that coal. The Court said in that case it directly and substantially affected commerce, and it was the express intent of those engaged in the combination so to do. The Court distinguished it from the first case to which you refer in which the restraint of production was entirely local.

We have had a number of cases, and will have more in the future, where a combination of this nature will go to the extent that the effect of its acts to restrain commerce. A restraint of production in itself does not directly affect commerce.

The proposition that is involved before this committee is that a dispute, however small, between a single group of workers and an employer is said by the Labor Board as it operates today, to affect commerce. But it is so remote in its effect, Mr. Chairman, that it has nothing to do with commerce. It just reminds one of the nursery rhyme about "the flea in the hair of the tail of the dog of the child of the wife of the wild man of Borneo." That is about the relationship between the legal principle that is already said to be established, and the ultimate circumstances which this bill seeks to control.

Senator WAGNER. May I ask whether, in the event a particular dispute such as you mention should not burden or in any way affect interstate commerce, would it come within the jurisdiction of the Board? Does this legislation attempt to deal with any activity which neither affects nor burdens interstate commerce in some way? Why don't you answer that?

Mr. EMERY. I will, if you give me a chance.

Senator WAGNER. I am talking about this legislation.

Mr. EMERY. I may agree with you that certain activities are within the province of this legislation.

Senator WAGNER. Yes, but the impression you are trying to create is that we are trying to do something which is not authorized under the Constitution of the United States, while the bill itself is limited to those activities which affect interstate commerce.

Mr. EMERY. Yes; that may be a fact. The definition here of what effects commerce in your bill on page 4 is that it means "anything burdening or affecting commerce or obstructing the free flow of commerce, or having led, or tending to lead to a labor dispute

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that might burden or affect commerce or obstruct the free flow of commerce."

What the administrative body gets its jurisdiction from is the proposition that any dispute with respect to the "unfair practices" recited in this act that is of such a nature that it may "affect" interstate commerce. Therefore the board thus created for that purpose has jurisdiction over the dispute. However, I do not quibble over what they intend to do in the light of what has already been done.

Senator WAGNER. I do not want to quibble either, because I know we cannot agree on these matters. Our points of view are entirely different.

Mr. EMERY. You agreed with me last year, but you withdrew your agreement. I have done my best to agree with you.

Senator WAGNER. Let me ask you this: Do you know of a single Federal statute that has been declared unconstitutional on the ground that it was not justified under the interstate-commerce clause, in which Congress in the declaration of policy had found that the particular practice dealt with did interfere with commerce?

Mr. EMERY. I will directly call your attention to 17 cases that have been decided in the last year.

Senator WAGNER. Do you mean the *Weirton case?*

Mr. EMERY. I am referring to 17 cases decided in the district courts, of which that is one, that may go to the United States Supreme Court, or that will come there. When the Senator was a member of a lower court he had a higher respect for the inferior judiciary.

Senator WAGNER. I have studied some of those cases, none of which have yet been decided by the Supreme Court of the United States. I think some of the lower courts lack appreciation of the problems that confront us, and that they ignore many of the recent and more enlightened decisions of the United States Supreme Court upon the terfere with, or burden interstate commerce?

But can you answer my question? Do you know of any case in which the United States Supreme Court has set aside a congressional act in which Congress in the declaration of policy stated that the particular acts prohibited would, if permitted to go on, restrict, interfere with, or burden interstate commerce?

Mr. EMERY. Yes.

Senator WAGNER. What is the case?

Mr. EMERY. There is the case of *Hill* v. *Wallace* (259 U. S. 44).

Senator WAGNER. There was no such declaration in the act under which that case arose.

Mr. EMERY. The act itself undertook to regulate the local sale of future contracts in grain, on the ground it was regulating commerce. The Supreme Court held it was not, but it was undertaking to regulate contracts wholly within a State.

Senator WAGNER. Was there not a later case upon the same subject?

Mr. EMERY. There was, after Congress had corrected its error, and redrafted the statute which had been declared illegal, and reformed and reorganized it. *Chicago Board of Trade* v. *Olsen* (262 U. S. 1).

Senator WAGNER. In the first act there was no such declaration of policy; and the second act, in which Congress declared its policy, was upheld.

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Mr. EMERY. It corrected the same declaration of policy.

In the employer liability acts Congress undertook to provide remedies for employees of carriers injured in interstate service. The Supreme Court asserted, in 207 U. S., a principle which I think is well worth calling attention to; that this act was a regulation of both intra and interstate commerce, just as in this bill you are undertaking to regulate relations that arise wholly out of occasions which are intrastate as distinguished from interstate commerce.

The case which answers the Senator's question very clearly is the *Employment Liability case* (207 U. S.), where the Court said:

> It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the proposition is to refute it. It assumes that because one engaged in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters if purely State concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution; and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures.

That is only one of many cases, and Child Labor cases are another, and commodity cases are another.

Senator WAGNER. There was no finding of a relationship to commerce in the *Child Labor case*.

Mr. EMERY. What has the declaration of policy to do with it?

Senator WAGNER. A great deal. Where it includes findings of fact by Congress, the Court will accept them unless they are unreasonable or arbitrary. Are you familiar with the *Bedford Stone Cutters case?*

Mr. EMERY. Very well; yes.

Senator WAGNER. The actual labor involved in that case was purely an intrastate transaction. The stone had been shipped from another State to the State of New York, and it had ceased to flow in interstate commerce. It had come to rest at the site of construction.

Mr. EMERY. Where did you say it was? Did I understand you to say it was in New York?

Senator WAGNER. Wherever it was, you know the case, and we will not quarrel about the location.

Mr. EMERY. I just wanted to be sure your geography was more accurate than your law.

Senator WAGNER. All right, wherever it was, the stone was at the place where the building was to be erected, and had ceased to flow in interstate commerce. Yet when the men who were members of a labor organization refused to work upon the stone because it had been manufactured in another State by nonunion labor, the court issued an injunction upon the ground that their action affected interstate commerce by interfering with prospective sales in interstate commerce. That extends interstate commerce pretty far.

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Mr. EMERY. It would, if you stated the principle correctly!

Senator WAGNER. In that case you think the court was right because it happened to decide against the workers.

Mr. EMERY. I do not think the decision of the court rested on the grounds you state, because the principle there stated had long been applied to business combinations. It was merely the principle that restraint of trade may operate at either end of commerce, or restrain both ends. If it operates at both ends, it may restrain more effectively than if it operated at one end only.

In this case you present, that union had undertook to prevent interstate commerce in stone by denying it any use in Denver having failed to prevent production in Indiana. You may have a combination of businessmen who undertake to fix forbidden prices on either end, either by controlling production at one end, or distribution at the market. They may establish a monopoly at either end or both ends of the operation. They are more effective than if control were at one end. The principle is that the combination presented does not escape the touch of the law because it happens to be a combination to restrain production at one point and one to prevent use of the article on arrival.

Finally, I want to call attention to the fact that the effect of the restraining combination was to directly prevent interstate commerce, because here were goods shipped which a local combination at the other end prevented from being used.

That would apply to any kind of combination, whether labor or business. For all restraints of trade look alike to the law.

In that regard, the labor combination is excepted from the tendency to monopolize in the control of wages. That is entirely free from the law, whereas a combination to fix prices among businessmen would immediately come within the law, and very properly.

If I may return to the opinion of Mr. Hughes, which was put in the record, I see no occasion to comment upon it further, except to call attention to the fact that Mr. Hughes is emphasizing that the control of production and of the circumstances of that production are constitutionally beyond the control of Congress. All of the acts of production he recites are not commerce or a part of commerce. Indeed, commerce cannot begin until all the acts of production are concluded.

The CHAIRMAN. What is the date of that opinion?

Mr. EMERY. That was May 27, 1926, when he appeared as counsel for the American Petroleum Institute before the Federal Oil Conservation Board, the issue before them being how to formulate a policy for oil conservation for the purpose of control.

Since then he wrote the opinion in the *Champlain Refining case* in 286 U. S. 210, in which the oil conservation commission of Oklahoma was undertaking to control local production of oil to prevent waste, and the regulatory control was sustained as against the claim made in exactly the terms you used here, that any attempt to regulate the production of oil and prevent its flow would tend to affect, obstruct, or burden interstate commerce in oil.

In that case, Mr. Justice Hughes, speaking for the Court, pointed out that what was at issue was an attempt by a commission created by the State to control acts of production. It was undertaking to

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prevent waste; and the complete control of these acts of production was committeed to the State by the tenth amendment. It was a valid exercise of regulatory authority, did not burden commerce, and no commerce could be had in oil until the production itself was concluded.

I want especially to recommend to the committee's consideration Mr. Hughes' 1926 statement, because the distinguished Chief Justice not only deals with Congressional control of production, but takes up incidentally the other questions often met with, that is that power could be exercised by Congress by virtue of the general welfare clause, or by virtue of the preamble. He points out from a case that arose in Massachusetts that, of course, you do not look to the preamble for any grant of power.

I also call your attention to what he says as to the general welfare clause. After examining it, he points out the Government of the United States is one of enumerated powers, is not at liberty to control the internal affairs of any State, especially production in the State, notwithstanding any assertion by Congress of a desire to provide for defense or promote general welfare.

This statement is very complete, and it goes to the very root of the question raised in my first proposition to which I followed your attention.

Sentor WAGNER. I do not understand your contention. I think your contention would have some relevance if this law were in effect and the Labor Board undertook to take jurisdiction unjustifiably in some particular controversy. Then you might well contend that the Board has no jurisdiction in the particular case. But your argument that some particular hypothetical activity cannot in any way affect interstate commerce does not sustain your objection to this legislation.

Mr. EMERY. Mr. Chairman, the distinguished members of this committee are practical men, practical legislators. You are confronted with this practical situation, that the present National Labor Relations Board will expire by operation of law on the 16th of June unless its powers are continued.

You have heard the Chairman of that Board, you have heard its members, declaring it cannot fulfill its function because of lack of power. You are asked to give it necessary power. The bill presented to you now is to make permanent that body and permit it to continue to operate in the manner in which it has heretofore operated, and it has operated in the past in any labor dispute presented to it.

As practical men you are being asked to confer upon that body the power to determine whether or not the acts which are described here and which are incident to employment relations in local production can be placed under the control of an executive body by act of Congress.

To that we say it cannot be done without a very plain violation of what the courts have continuously held; that there can be no regulatory measures by Congress which attempt to control local production or the circumstances and relations which arise out of that production.

The CHAIRMAN. You claim this Board has never taken the position that any labor dispute brought to its attention was without its jurisdiction?

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Mr. EMERY. The Board has never, in any labor dispute brought to it, considered the question of whether or not the dispute before it affected commerce. It always assumed it, just as the distinguished Senator from New York, when he was chairman of the Labor Board, held that any dispute coming before it was an alleged violation of section 7 (a).

The present Board exists under an Executive order of the President issued under the N. R. A. Act, plus Resolution 44.

The CHAIRMAN. You say the Labor Board has assumed every dispute that was brought before it was under interstate commerce?

Mr. EMERY. It has never examined the question of whether any dispute affected interstate commerce; it assumed it, or that it involved a violation of section 7 (a).

Here is an executive body to be created. It will be acutely sensitive about whether or not any dispute presented to it involves a violation of the so-called "unfair practice" acts. It would assume they affect commerce, and they would not go into that question very carefully.

Senator WAGNER. Mr. Chairman, I do not think I ought to omit saying to Mr. Emery that an aggrieved party, even under Resolution 44, has a right to court review if the Board essays jurisdiction in any case in which it has no authority to act.

Mr. EMERY. I beg pardon; under Resolution 44 the aggrieved party has no right of review except in the single instance of section 2 of the act, with regard to an election.

Senator WAGNER. Aside from elections, the Board has no power to enforce its decisions, so that any party who feels aggrieved can disobey the Board with absolute impunity. I propose to give the Board some power, and if it makes mistakes, the courts will correct them.

I know that you are against the philosophy of this bill, Mr. Emery, and you are free to present your viewpoint just as I present mine. But you are addressing yourself to a question which is not involved here unless this committee is going to decide these constitutional questions rather than have them decided when they come up under the act.

We cannot here tell what particular facts will be involved in every dispute before the Board, and it is only when the facts are known that one can determine whether interstate commerce is affected. You should save your discussion for the Board or the courts.

Mr. EMERY. Will you pardon me a moment, because I do not want this statement of yours to go by unchallenged. It is a very important statement. I know you would not intentionally make a statement of this kind unless you believe it to be true, and I think I can call to your attention that it does not represent a fact.

You say the party who is aggrieved by the act of the Labor Board at the present time has a remedy, and you say as far as he has no remedy, the Board has no power of enforcement, that the Board can make an investigation and come to conclusions, but they cannot enforce it, outside of calling elections. It is the chief complaint against the Board that it undertakes to enforce its authority by "extra-legal" methods and not in the manner provided in the statute under which it was created.

The CHAIRMAN. What do you mean by that?

Mr. EMERY. I mean it undertakes to take away a man's "blue eagle" or his compliance certificate, by virtue of which he cannot do

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business with the Government. If a man is doing business with the Government and does not obey an order which the Board has no authority to enforce, the Board takes from him his compliance certificate; and from that time on he cannot do business with the United States Government. So the penalty inflicted upon him may be the amount of business he loses, and it may be all of his business.

The present Labor Board, with respect to the enforcement of its orders, has enforced them without respect to the opinion of the Attorney General of the United States holding no executive body may create penalties. They may be established only by legislative act. It is just as lawless as its predecessor, which operated up to December 16, 1933, in excess of its authority, with respect to controversies arising under codes, over which that Board had no jurisdiction.

Perhaps Senator Wagner does not like the *Weirton case* because the Court held his Board had no authority when it intervened in that case.

I want to point out this present Labor Board in one decision after another, one order after another, may take away a man's compliance certificate or "blue eagle." If he happens to be a garment manufacturer he must have a label in order to sell to the retailer under the code. It means he is exiled from his customers, because they can do business with him no longer.

The Board has also taken upon itself to issue alternative orders which defeat review in the courts of the United States since they say it is not a final order but merely an alternative order and he can obey it or not.

If he does not obey, then the Board will take some further steps and take away the compliance certificate, or revoke the "blue eagle." In either one of those cases the man is severely penalized. He must obey the order of the body or he may risk the complete loss of his business.

The CHAIRMAN. That is a rather strong statement to say this Board exercises power that is lawless.

Mr. EMERY. In that connection I will now direct your attention to the opinion of the Attorney General of the United States.

Will you now permit me to read a line from Mr. Justice Holmes which might interest you in connection with this comparison which has been made?

Senator WAGNER. The comparison about what?

Mr. EMERY. Comparison of decisions. This is what Mr. Justice Holmes said in his address to the Harvard Law School.

Senator WAGNER. Don't you think you should read the dissenting opinion of Justice Holmes in the *Child Labor case*, if you consider him such an authority? Are you in accord with Mr. Justice Holmes?

Mr. EMERY. I am in accord with him in respect to this statement.

Senator WAGNER. Do you agree with the decision of Mr. Justice Holmes in the *Child Labor case?*

Mr. EMERY. I do not; it is not the law of the land. But I want to point out with respect to the principle of this bill you are advocating, Mr. Justice Holmes' dissenting opinion in that case is clearly against it. Mr. Justice Holmes said: "I told a labor leader once what they won't favor, if a decision is against them it is wicked", and perhaps that is why you are against me.

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Senator WAGNER. I agree and disagree with workers, but you do not.

Mr. EMERY. But you do not regard yourself wicked, because you do, and say I am. However, that does not go to the law of the case.

Senator WAGNER. Your attitude is unchanging. Some day I am going to hear you approve of some legislation in the interest of progress. Then we are going to have a refreshing day.

Mr. EMERY. If your memory was longer, you would remember a lot of it.

Senator WAGNER. I remember your contention that my employment exchange bill, which is now a part of the law of the land, would violate every provision of the Constitution. You were also very apprehensive about the effect that it would have upon the country.

Mr. EMERY. And as usual, I am reminded of the form in which the Senator proposed it, and that Congress passed it in a very different form.

Mr. Chairman, I am afraid I am unduly delaying you in these very interesting discussions with the Senator from New York.

Senator WAGNER. On this question of the effect that certain activities have upon commerce, I shall read what Chief Justice Hughes said, not as a lawyer but as a Justice:

> The interests of producers and consumers are interlinked. When industry is greviously hurt, when producers fail, when unemployment mounts and communities dependent upon production are prostrated, the wells of commerce run dry.

The CHAIRMAN. You do not disagree with that?

Mr. EMERY. No; certainly not.

Senator WAGNER. So that at least if there were industrial warfare which might result in prostration of the industries in a community, you would think it proper for the Federal Government to intervene?

Mr. EMERY. Of course, the Federal Government does intervene in many appropriate cases. It has been intervening throughout this depression, and extending aid to States which are unable to actually care for themselves, and in many other ways.

What we are talking about now is permanent legislation, we are no longer talking about emergency or temporary legislation, so that we may no longer speak with plausibility about "flexibility" in the expansion of power. We are talking about two very great fundamental and different powers in the Government of the United States, the control over commerce, and the control over production. I am trying to call the committee's attention to the fact that the courts have continuously held Congress has plenary power to control the first and none over the second. I would like to proceed to call the committee's attention to other matters which are qeually fundamental here.

Assuming for the moment the validity of the method of regulation prescribed, the procedure provided denies due process of law by permitting amendment and enforcement of a complaint without notice to the defendant. It further permits him to be deprived of valuable rights of liberty and property and damages to be assessed against him by orders issued upon amended complaints of which he

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has had no notice, no opportunity to be heard, and which ultimate orders may be formulated upon declarations of which he has no knowledge. It is equally a denial of due process to authorize an administrative body, even though it were otherwise validly established, to take evidence without regard to established rules of law and to undertake to make findings of fact, founded upon such alleged evidence, conclusive upon a reviewing court.

Now, I say this was very deliberately put into this bill, because it was in the bill a year ago, and when this committee reported the bill to the Senate it carefully corrected these errors and provided that when a complaint was issued a party should have notice of that complaint, and if the complaint were amended, service of notice to the party had to be had the same as in the original instance, just as in a court of law; and furthermore, that the complaint could not be amended after the evidence had been closed.

The provision which is written in this bill here is a very extraordinary provision. It is one of the number of extraordinary things that appear in here.

On page 12, in section 10, subdivision (c), it says:

> Any such complaint may be amended by the member, agent, or agency conducting the hearing or the board in its discretion at any time prior to the issuance of an order based thereupon. The person so complained of shall have the right to file an answer and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

I never heard of an administrative body or a court at any time that was possessed of the power to amend its complaint up to the time it issued an order.

The CHAIRMAN. You know what the practice is in the Federal Trade Commission?

Mr. EMERY. The practice in the Federal Trade Commission or any other body is that if the complaint is amended, it must be re-served on the defendant, because he may be charged with an entirely different thing. Of course, ultimately due process of law means that a man have his day in court. Yet it is proposed here to permit amendment of the bill up to the time an order is issued.

Of course the order is issued after the body has reached its decision with regard to what it is to be, and to amend the complaint at any time without due notice of that amendment, is a denial of due process.

While we are on section 10, I would like to say this, that this is the first time in the history of any legislation proposed to Congress, I ever heard of a bill being presented which included the provision that it never could be amended, and that a power granted in it was not subject to repeal or amendment.

The CHAIRMAN. Where did you find that?

Mr. EMERY. I find that in section 10 (a), in the second sentence, which reads:

> This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise, except as provided in section 11.

If plain English means anything at all, this means the power so granted cannot be "affected" by any means of adjustment, including "law." There it is, in plain language, "shall not be affected by any other means of adjustment or prevention that has been or

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may be established by agreement, code, law, or otherwise." What that is intended to accomplish I do not know. But reading it I must assume any layman or lawyer would conclude it is an attempt as far as possible to freeze a grant of authority beyond the action of any future legislation. If it does not mean that, it does not mean anything.

The CHAIRMAN. Section 11 is the court section.

Mr. EMERY. Section 11 is confined to vesting in the District Court of the United States the power to prevent or restrain any "unfair labor practice" through the Attorney General or his district attorneys, at the request of the board.

This section, of course, provides for no hearing before the board. The party may have no knowledge of it, except when he is presented with a restraining order from the District Court of the United States. This is nothing different from what has happened heretofore, perhaps.

Senator WAGNER. That is taken practically word for word from the Clayton Act.

Mr. EMERY. What of that?

Senator WAGNER. You said that it was new and novel.

Mr. EMERY. It is new in this bill, and at this time I am simply calling attention to the changes from the original.

Senator WAGNER. Everything is novel in this bill, because it is a new bill. But it is taken from the Clayton Act, passed in 1914.

Mr. EMERY. You might take something out of the Ten Commandments and it would be novel in such a bill.

What I am directing attention to at the present moment is that the procedure provided in here is not defensible procedure. I call attention to the provision which declares the power vested in the board cannot be changed even by law or by agreement.

I just wanted to call attention to it in passing. Of course that denial of due process does not require any discussion. It needs only to be called to your attention, and it refutes itself.

It has been said this bill is framed on the principle of the Federal Trade Commission Act. Whoever made the comparison was either unfamiliar with the Federal Trade Commission Act or had a somewhat faulty memory after examining it. The Federal Trade Commission Act requires a complaint to be served, in the usual manner, and the order cannot require an answer to be filed in less than 30 days. This bill may require an answer to be filed within 3 days anywhere in the United States or its possessions, and the service can be by telegraph. This is the first time we have invoked the telegraph as a means of serving processes of law, and I suppose one should admire the restraint which did not suggest the use of the radio or telephone for service of process.

The CHAIRMAN. The claim is made that labor disputes are of such a character, and cause so much delay, waste, and trouble, that speed in adjusting those differences is desirable. That is an argument made for the brief time to answer.

Mr. EMERY. Almost any form of attack upon the liberty or property rights may be of such a nature it may involve immediate loss. That is why we have the processes of equity for the purpose of prevention. We are confronted with this peculiar situation here. We

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realize Congress passed the Norris-LaGuardia injunction bill to prevent labor relations from being limited by the process of the equity court. The whole purpose of this bill is the generous use of injunction. So the relations of the employer and employee may be controlled and regulated by the flexible processes of a court of equity throughout this bill, a somewhat different function of the equity court than has been hitherto urged in labor quarters.

Senator WAGNER. Last year we passed a bill in this Congress, affecting about 2,000,000 railway employees, which enumerated unfair practices almost identical to those in this bill. Thus, when you say that this is something novel, you are not quite accurate. You are simply opposed to the extension to those whom you represent of principles that Congress has approved.

Mr. EMERY. I am opposed to its extension to a field over which Congress has no jurisdiction. When you passed the Railroad Labor Act, you were regulating instrumentalities of interstate commerce, because in contemplation of law a railroad president, a brakeman, or a box car are all instrumentalities of interstate commerce and may be regulated by Congress.

Let me say that in 1920 when the Transportation Act was pending before Congress, a far more drastic regulation of employer and employee as operating instrumentalities of interstate commerce was proposed and passed the Senate. It was more extreme than the suggestion here. I call the committee's attention to that, because of the well understood distinction between regulation of interstate commerce and the regulation of relations in production proposed here.

Senator WAGNER. May I ask this question. Suppose a strike were threatened in a very large plant which manufactures products that obviously go into interstate commerce, would not the Federal Government have the constitutional authority to prevent the unfair practices tending to produce such a strike that might dry up the channels of trade?

Mr. EMERY. Dry up the channels of production?

Senator WAGNER. No; of commerce.

Mr. EMERY. Of course it would have an ultimate but not a direct effect on commerce. I am interested in the way in which in the discussion of this bill you turn to some great major industry to illustrate the need of regulation, whereas the experience of a year and a half of the National Labor Board shows the Board scouring the country for many petty disputes in small plants, small complaints, instead of dealing with major issues that threatened, even on your theory, a serious burden on commerce. The Board has confronted a vast number of little disputes among small employers who are brought down to Washington before this Board, admitting, as they say, their right to enforce the thing they insist upon, but attempting all of the time to drive men completely out of business by extra legal penalties unless they obey their orders.

In a free country that is one of the most arbitrary practices ever attempted under the color of law.

Senator WAGNER. In a free country, the employees in a plant small or large should have rights equal to those of their employers. If they desire to organize in order to attain bargaining equality the

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law should protect them, and I know that they are not protected today. When we are talking about freedom let us not forget to seek freedom.

Mr. EMERY. This legislation is to bring about economic freedom for the workers. I am trying to get you to think about economic freedom for both employer and employee because no one will go further than those I represent in asserting and defending economic freedom under all circumstances and for all men. But we are constantly confronted with the odd attitude of distinguished men like yourself who become so excited over one kind of coercion that you shut your eyes to every other form. Although you have said in a public statement before this committee that you agree with me, as does the President of the United States, that "coercion from every source" ought to be prohibited, you will not write it into a bill.

Senator WAGNER. As to coercion by employees, present injunctive remedies are sufficient to deal with that. The chairman of this committee has said on the floor of the Senate that this bill deals with the economic relationship between employer and employee, and not the relationship among employees, which is a matter they must settle for themselves.

The employer has economic freedom in self-organization, and we are trying to achieve the same for the employees, so that there will be balance in our economic situation.

I sponsored the N. I. R. A. which, it is generally admitted, has been of advantage to the industries of this country.

That act gave all the rights of association to employers, and tried to give similar rights to workers. But the workers' rights have been denied.

Talking about majority rule, your own association has in its platform that whenever the majority in a trade association agree upon certain prohibitions of vicious trade practices, these prohibitions shall be binding upon the minority. Don't you think workers ought to have the same rights?

Mr. EMERY. After your very interesting speech, you ask me a question at the end of it.

Senator WAGNER. Am I right or wrong in my statement?

Mr. EMERY. Somewhat, but the statement is taken out of a text, and I think the text should be made clear.

Senator WAGNER. I have talked to manufacturers who have a very much more liberal attitude than you have.

Mr. EMERY. So that you may not misunderstand my position, and let me make myself clear. First of all, as to what has been said about majority rule—criticism was directed against the Labor Board asserting the principle of majority rules in the *Houde case*. There it was held that the representatives elected by a majority of the employees in a unit of employment become the exclusive bargaining agency for all employees. In this bill such representatives become the exclusive makers of agreements with the employer. By such provision, the individual and the minority are excluded from bargaining. Their rights are completely taken away from them.

The CHAIRMAN. Are you going to discuss that later?

Mr. EMERY. Yes; and I want to say this with respect to it now. We are talking about the right of the Labor Board to make this

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decision. The distinguished chairman of the Labor Board in his appearance before you, as the Senator from New York thought, was making a very strong contribution in defense of his board's action by saying that the manufacturers in their platform had suggested that the majority could impose conditions on a minority of competitors in the making of a code.

I do not say this in criticism of the Labor Board, but their action was predicated upon this proposition, that the Congress having granted to the President power to establish such agencies as he thought necessary to accomplish the policies of the N. R. A., had set up a Labor Board, and afterward enlarged its powers by successive orders. This body then began to interpret its powers in the cases that came before it. It had no authority directly from Congress until the passage of Resolution 44, and when that resolution was passed the issue of majority rule was before you gentlemen.

When you enacted the Railroad Labor Act you specifically provided in that act that the majority of a group or craft should determine who would be its representatives for bargaining purposes.

The Labor Board found no such provision in the law; if Congress had desired to establish that principle, it would have even said so. It discussed, but did not enact it.

When the Labor Board declared the majority rule in the *Houde case* it amended the act which you passed, but into which you refused to write such a declaration.

When did any board have a right to amend an act of Congress and write into it specific declaration which the legislature itself refused? Why construe an act to diminish the rights of workers it was declared to enlarge? As one reads the bill of the distinguished Senator, he finds every phrase diminishes existing rights of employees, as well as employers. The employees lose many rights which they now possess.

If this bill goes into effect, employees will lose the right to make individual agreements, and their labor agents and working conditions will be determined by the majority. That means out of 5,000 men, 2,501 can determine the representatives and bargain for the other 2,499.

If a man holding his membership voluntarily joins an organization, he can say I will disagree with them over matters of policy. I no longer wish them to represent me in the matter of making agreements with respect to hours and wages, then what does he do? He may withdraw from the organization and not from employment. An employee in any employment unit cannot, under the majority principle as it operates in that employment unit, accept by arrangement with an employer, he cannot make an agreement for himself, he can present a grievance and can utter a complaint, but he cannot bargain for himself. He can only withdraw from employment. There is a fundamental right of both liberty and property in labor, and that is the right to make a contract for yourself, and in not having it made for you by one not selected by you. That principle has been recognized ever since we have had any law.

Now, the Senator says that the parties at issue are so weak they are unable to protect themselves. Well, Mr. Chairman, you are a practical man, you have seen the development of great combinations

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in the United States. You know that one of the most serious social questions with which we are confronted is the control of combinations, whether it is that of employers or employees. I hold no brief against the equal control and regulation of each.

The thing the Senator from New York does not understand is that we are not objecting to regulation and protection of any parties within the proper jurisdiction. We are objecting to your continually ignoring what everybody that reads the daily press knows, that coercion is not peculiar to employers. There is constant coercion by employees as well as by employers.

At times in the history of the United States in recent years, Presidents of the United States have had to protect the paramount public interests of the people of this country against combinations of employees in time of disturbances and strife. That was done by President Cleveland in the Debs case, it was done by President Wilson against the United Mine Workers. Indeed President Wilson addressed a message to Congress October 27, 1919, after making every effort to prevent a strike which threatened to destroy the fuel production of the United States, wherein he declared "the strike under these circumstances is not only unjustifiable, it is unlawful."

Is there any suggestion in these measures that these powerful combinations shall be put under control, or that they shall accept collective responsibility with collective bargaining?

I say there is no place in the United States for a grant of power without corresponding responsibility for its use, whether by employer or employee, by combinations of workmen or combinations of business men. Neither one of them can, in the public interest, safely operate in association without corresponding responsibility for the exercise of the power they develop.

You are confronted with combinations which I have no desire to criticize as such. No one knows better than myself that the courts of the United States ever since 1843 have recognized the right of working men to organize and by legitimate means protect their own interests. No court of the United States has ever refused to give effect to this right on the part of workmen to associate themselves with others.

The public policy of the United States stated in the Norris-La Guardia Act would insure the right, and would include the right, of men "to decline to associate with their fellows." This bill will enact the majority rule and compel a man to associate with his fellows or else deny himself the right to a representative to write his bargain for him. He can protect himself against the consequences of compelled agency in only one way, and that is by resigning from his employment. If he is a member of a voluntary organization he could protest undesired agency by resigning from the organization, but under this proposal he cannot except by resigning from his employment.

Now this committee realizes the fact it is essential to the paramount public interest that all combinations of whatever character should be regulated in the exercise of the power, which by the very nature of this bill is promoted. But proponents are here asserting a principle of control of which I do not think they realize the consequences, when they undertake to say an administrative body may

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penalize, and issue a cease-and-desist order against any act which in their opinion may "affect" commerce between the States because that act may ultimately bring on a labor dispute or a strike. If the board may undertake to control the circumstances, leading to a fact obviously it may likewise control the fact itself. If you are going to give an administrative body the right to control relations between employer and employee because failure to correct them may lead to a strike that will interrupt commerce, you are asserting at the same time the right to lead, control, or prohibit the strike itself, because it will actually interrupt commerce.

If you can control the circumstances that lead to it, certainly you can control the thing itself, when it arrives.

I do not deny you can control it, on the contrary I think you can. I think the United States can control any combination that undertakes to directly prevent commerce between the States. It does not make any difference whether the thing which is presented is an economic or physical, whether it is a monopoly, a mob, or a sand bank. But it is within the control of Congress if the threat to commerce is directly and substantially related to it. Here it is argued you can control trivial circumstances through an administrative body whenever presented to it, because any of these unfair practices can be complained of by a single individual, and such individual may be brought before this Board in order that he may have redress by the issuance of an order.

There is nothing in this bill that undertakes to say that the act threatening commerce must be of importance in these acts which are defined in the bill, in order to establish a right to redress. The Senator would not tell a single individual he could not get redress if this act is passed.

Senator WAGNER. Since you ask me, I think that a worker, whether he works in a plant having 2 men or 5,000 men, should have the same protection under the law. Of course, we all know, however, that where there are only 3 or 4 men in a shop, these questions hardly arise. You know, also, that in the cases coming before the Board, the majority of workers are in company unions, which are generally dominated by employers.

Mr. EMERY. The Senator is not very fair in making a statement of that kind. You draw an indictment that Edmund Burke declined to do.

Senator WAGNER. The company unions that have come to my attention are dominated by the employer, and most of them were created as soon as section 7 (a) became a law, and in order to circumvent the law. Let me call to your attention that, where the company union is the majority force, the employer insists upon majority rule. But where the outside union has the majority he insists upon individual bargaining. Why this distinction?

In one instance that I recall an employer wrote a letter in which be protested to the Labor Board that those who were objecting to the arrangement between employer and employee represented only a minority, who were interfering with the majority rule of his company union.

Mr. EMERY. I am afraid you are like the Bishop of Oxford who said "Orthodoxy is my doxy and heterodoxy is somebody else's doxy."

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Of course I realize, and I am sure every thinking man does, that employees being human beings, they are like employers, and that human nature does not change because the individual is an employee or because he is an employer. We all have the frailties of our common nature. We are prone to control the people with whom we deal and exercise authority over. Interesting things appear in the cases that come to court where there is an impartial atmosphere as the judge sits down to examine the facts, we get some very interesting cases. I want to illustrate what we have been talking about by one case, a case which has gone to the court, and with which the Senator from New York has had some connection at the beginning, that is, the *Weirton Steel case.*

That case went to court on the allegation that the union which claimed to be the chosen representative of the men in the plant had been interfered with and denied opportunity to freely organize and exercise its right to choose its own representatives. They had been denied opportunity for collective bargaining on behalf of those whom they represented.

The Government appeared in that case as petitioner through their counsel. The case was tried for 5 weeks. It was then argued for 3 days, and 283 witnesses were examined under oath. The record was between 5,000 and 6,000 pages. The court had two questions before it: Had there been a denial of the right of self-organization or interference with this right of organization? That was the first question, and on that question the court made its finding of fact.

Then, it had the further question of law to decide, and it decided that question. I want to call your attention to what the court found as a matter of fact in this case, because it is a very interesting illustration. We are not talking about controverted facts; we are talking about the finding of fact by the court from testimony under oath. The question was whether, among the 12,000 employees there represented, the union constituted a preponderant majority, and the union therefore had a right to say it represented them. What was the testimony?

I read from the opinion of the court as follows:

> Sander, a teller and member of the canvassing board of the Amalgamated Association, testified that only 17,996 steel workers throughout the United States were eligible to vote in the election of officers of the association in 1934. Of this number only 5,319 exercised their right to vote. Michael Tighe, president of the association, was the choice of only 2,789. Sander's testimony also showed that there were only 183 employees of defendant eligible to vote in 1934. It is absurd that officers chosen by 183 employees of defendant should be the representatives of 12,000 employees.

The CHAIRMAN. Mr. Emery, I think this is a good time to suspend until tomorrow morning, when you may return and complete your statement.

(See statement of James A. Emery resumed on pp. 840–869.)

We will recess the hearing until 10:30 o'clock tomorrow morning.

(Thereupon, at 12:20 p. m., the hearing was adjourned until 10:30 a. m., tomorrow, Friday, Mar. 22, 1935.)

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NATIONAL LABOR RELATIONS BOARD

FRIDAY, MARCH 22, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR.
Washington, D. C.

The committee met, at 10:30 a. m., in room 318, Senate Office Building, Washington, D. C., Senator David I. Walsh presiding.

Present: Senators Walsh (chairman) and Murray.

Present also: Senator Robert F. Wagner.

The CHAIRMAN. The committee will please come to order. Mr. Emery, we will be glad to have you come forward and resume your statement.

Mr. EMERY. Mr. Chairman, I venture to make a suggestion to the committee, if I may, for their consideration. You have a large number of out-of-town witnesses here, and as I am a resident of Washington, if it would serve their convenience and the convenience of this committee I should be glad for you to hear the out-of-town witnesses, if you will permit me to finish at another time, or at the end of these hearings.

The CHAIRMAN. We thank you very much, and I think that would be very helpful.

Senator WAGNER. Mr. Chairman, before Mr. Emery leaves, may I read into the record what I referred to yesterday as the platform resolution of the Congress of American Industry and the National Association of Manufacturers?

This resolution provides [reading]:

Under proper safeguard, all approved competitive practices and prohibitions submitted by a properly defined majority of a group, trade, or industry shall be binding upon the minority. A minority group, in the absence of a majority request, should likewise be authorized to request a code of its own, limited in effect to its own members and to a period that would automatically terminate when a majority of the industry begin to operate under an approved code.

That is the majority rule for industry. Now, in regard to employment relations, the same platform provides [continues reading]:

The principle therefore is to recognize the equal right of minorities or individuals to bargain for themselves, directly or through representatives of their own choosing.

The CHAIRMAN. Do you care to comment on that, Mr. Emery?

Mr. EMERY. It would take some little time to do that.

Senator WAGNER. I should think it would.

Mr. EMERY. But nevertheless, I would simply like to remark with reference to the movement made by the Labor Board which the Senator defended, like the flowers that bloom in the spring, it has nothing to do with the case.

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I simply want to serve your convenience, Mr. Chairman; and I want to ask this, if I may, if the committee will go on to the out-of-town witnesses, I will retire; then at the conclusion of the last day, if you will let me finish and will let my testimony be consecutive, that is all I would ask.

The CHAIRMAN. We will be glad to do that, Mr. Emery.

Mr. EMERY. I will be glad to check Senator Wagner's inquiry and find out about the platform.

Senator WAGNER. The platform is right here.

Mr. EMERY. It seems that the Senator does not happen to see the relation between what he has read, and what I have stated.

The CHAIRMAN. Mr. Carey, if you will come forward we will be glad to hear you.

STATEMENT OF W. GIBSON CAREY, JR., PRESIDENT OF THE YALE & TOWNE MANUFACTURING CO., NEW YORK, N. Y.

The CHAIRMAN. Mr. Carey, will you please give us your full name for the record.

Mr. CAREY. My full name is W. Gibson Carey, Jr.

The CHAIRMAN. Where do you live?

Mr. CAREY. Greenwich, Conn.

The CHAIRMAN. What is your occupation?

Mr. CAREY. I am president of the Yale & Towne Manufacturing Co.

The CHAIRMAN. Where are their offices located?

Mr. CAREY. Our executive offices are in New York City, and our head office is actually in Stamford, Conn., legally.

The CHAIRMAN. What is the nature of the business carried on by the Yale & Towne Manufacturing Co.

Mr. CAREY. We manufacture all sorts of locks, and also material and handle equipment, such as electric lifts, trucks, and pulleys, and so forth.

The CHAIRMAN. How many employees have you?

Mr. CAREY. Between 6,000 and 7,000.

The CHAIRMAN. Are they organized in any labor organization?

Mr. CAREY. They are organized in industrial councils at our larger plants, and direct dealing in our smaller plant.

The CHAIRMAN. What do you mean by industrial council?

Mr. CAREY. The so-called "company union."

The CHAIRMAN. In your larger plant you have company unions, but not in all of the smaller plants.

Mr. CAREY. That is correct.

The CHAIRMAN. How are the company unions organized?

Mr. CAREY. I do not understand the exact significance of your question, but they have all been voted on by the men.

The CHAIRMAN. That is what I mean. You said you have industrial councils?

Mr. CAREY. Yes, sir.

The CHAIRMAN. Who represents your employees in collective bargaining with the employers.

Mr. CAREY. That is correct, sir.

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The CHAIRMAN. And these industrial councilors are selected by the men?

Mr. CAREY. Yes, sir.

The CHAIRMAN. In elections held how often?

Mr. CAREY. Once a year.

The CHAIRMAN. What is the name of the organization of your employees?

Mr. CAREY. The industrial council.

The CHAIRMAN. The organization of the men is called the industrial council?

Mr. CAREY. Yes, sir.

The CHAIRMAN. And they select their representatives?

Mr. CAREY. Yes; by secret ballot.

The CHAIRMAN. To negotiate with the employers?

Mr. CAREY. That is correct, sir.

The CHAIRMAN. How often are these elections held?

Mr. CAREY. Once a year.

The CHAIRMAN. Are they voluntary organizations without a constitution, or are they voluntary organizations with a constitution?

Mr. CAREY. With a constitution.

The CHAIRMAN. Have you that constitution here?

Mr. CAREY. I have a constitution here belonging to one of the plants from which I am going to give some excerpts.

The CHAIRMAN. What percentage of your men are connected with these company unions, would you say?

Mr. CAREY. I should say 60 percent.

The CHAIRMAN. I have been using the word men; and I suppose you have women also employed?

Mr. CAREY. Yes.

The CHAIRMAN. And they also belong to the organization.

Mr. CAREY. Yes; and I so took your question to mean both men and women.

The CHAIRMAN. Wherever there is a desire or a wish for a company union, you make no objection to the one being set up.

Mr. CAREY. Absolutely not.

The CHAIRMAN. How long have these company unions been in existence?

Mr. CAREY. In our largest plant, which is in Connecticut, our company union runs back to 1919.

The CHAIRMAN. And others have been organized from time to time since that time?

Mr. CAREY. Yes, sir.

The CHAIRMAN. How many employees would you say you have in your various plants?

Mr. CAREY. About 6,000 to 7,000; some of which are outside of the United States, and between 4,000 and 5,000 in the United States.

The CHAIRMAN. Where are your plants located?

Mr. CAREY. Connecticut, Pennsylvania, Michigan, and Illinois.

The CHAIRMAN. Do you mind telling the places?

Mr. CAREY. Stamford, Conn.; Philadelphia, Pa.; Detroit, Mich.; Chicago, Ill.; and North Chicago, Ill.

The CHAIRMAN. You made reference to plants being located outside of this country?

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Mr. CAREY. One plant at St. Catherines, Ontario, Canada.

The CHAIRMAN. Have they a company union?

Mr. CAREY. No, sir; it is a small plant. We also have plants in Europe.

The CHAIRMAN. You may proceed with your statement.

Mr. CAREY. Not being trained in legal affairs, I am appearing before this committee as a business man who has had experience in labor problems and who, furthermore, is tremendously interested in them. It has been my privilege not only to observe but also to participate in negotiations with employees, both as individuals and collectively. By this term "collectively" I mean that I have had experience both with industrial councils or company unions and with groups of employees who have wished only on some temporarily pressing problem to discuss their affairs as a unit. I am mentioning all this so that you may have some knowledge of the background from which I speak and so that you also may know why I am not touching on possible constitutional considerations, which I feel I am not qualified to discuss.

The first point I wish to emphasize is that relationships between labor and management are in my opinion from every practical standpoint best handled locally. Undoubtedly in cases where mediation is desirable in connection with some pending conflict of very large scope the Department of Labor should act. That process, however, is one which has been in existence for a long time and needs, therefore, no further legislative action. By far the largest number of misunderstandings or disputes can for the good of everyone concerned be handled solely within the States in which they occur.

As a business man I cannot emphasize too strongly that the varying conditions in different localities make it almost essential for persons with experience and full knowledge of the immediate circumstances to conduct any negotiations without the direction of or supervision of a Federal board, which may have the best intentions in the world but which is totally unable to know the local circumstances in all of the industrial areas throughout the United States. It is certainly true, furthermore, that violent changes of labor policy will be avoided by having labor relationships controlled within the borders of each State. This avoidance of too quick changes of policy which undoubtedly would occur with the shifting personnel on any Federal board is, I think, much more important to the welfare of business at large, including the employees, than is generally realized.

It is certainly true also that in this whole question of labor policy the immensely complicated reactions of millions of human beings are involved. I need scarcely say that men vary tremendously in what they want and how they react to different kinds of approach to their problems. Certainly the close knowledge of and understanding of conditions within each State and within each community is necessary to attain from these human values the utmost in cooperation and effort. In saying all this I realize fully that a Federal board would have the advantage of using local boards or individuals, but even so I maintain that unquestionably any attempt to handle employment relations throughout the United States from any central source will prove a decided detriment to the welfare of this country. It is my belief that the activities of the present National Labor Board, despite such good work as it may have done in certain in-

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stances, stands as a corroboration of what I have said. Certainly any form of Federal labor board with many local representatives will bring about and magnify disputes which by purely local treatment would in most instances be minor incidents. This is true because there will always be some unreasonable persons either in the plants or among the staffs of labor unions to start complaints even though they may be unjustified.

Fair management is labor's best friend. Despite what has been said so many times, there is in well-run American business a unity of purpose extending from the president of a company to the yard laborer. The object, of course, of each constructive officer or employee is to advance the welfare of his individual company, as well as his own interests. In the long run it is my belief that the utmost for the company and for the employees is attained when managements deal either directly with their men or through industrial councils or, as they are sometimes called, company unions. This, I think, is a basic statement, because in dealing either directly or through industrial councils the management has a better opportunity to explain the affairs of the company to the employees and to obtain their cooperation and maximum effort in times of stress.

I do not mean to say that representatives of organized labor may not in eras of bad business be reasonable, but the fact is that such representatives are by no means always in a position to agree even to fair requests. Contracts on wage scales may be involved. The possible effect on other organized plants in the community, even though those plants may be in a different line of business, may control the reasonableness of labor representatives in granting justified demands for wage adjustments. Please do not take from this that I am arguing for, or even hinting at, the desirability of low pay. My belief, and I think nearly all businessmen today agree, is that high wages are desirable from a great many viewpoints, but it must always be remembered that a company cannot be constructive either to the community at large or to its employees unless over the long run the outgo is less than the income. The fact is that over the years it has been possible to reduce costs to the public and at the same time to increase wage levels immensely. As one outstanding example of this I mention the automobile industry, the labor of which has never been higher organized but which has constantly contributed toward the development of the Nation while at the same time it has benefited its employees to a remarkable degree.

The changing status of labor in the United States in the last hundred years has been tremendous. The standard of living has improved fourfold. The hours of labor have been decreased tremendously. Furthermore, the percent of the national income received by labor has advanced constantly from 38 percent in the year 1850 to 63 percent at present. These trends must in any fair man's mind be given great weight, since they show that without the Wagner labor relations bill really immense strides have been made by industrial employees.

Even the most hopeful of us are undoubtedly still worried and greatly perplexed. The fact is that we must get out of this depression. In my opinion even good legislation should be postponed at this time, provided it is so great in scope and influence as to

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unsettle business and retard recovery. In this connection let me read an excerpt from Mr. Moley's March 23 editorial in the magazine Today.

From this editorial I read the following:

What are the currents of thought and feeling in the stream itself these March days? The happiness and well-being of millions of people are concerned in this prosaic question.

We cannot deny the presence of a vast pessimism among us. This spirit possesses even wise and hopeful friends of the "new deal."

One of the wisest liberals that I know has written me the following letter. I believe it will call to the attention of those who are forgetting fundamentals in their preoccupation with the passing show of controversy, what is being thought by serious men, profoundly concerned with human welfare. I print it because, while I am an optimist, I am no Pollyanna. I do not agree with all that my correspondent says, but I believe his reaction to be that of a great many people.

"I would not be honest if I did not say I do not believe confidence has ever been lower in this country, save during the bank holiday. I am afraid we are running rapidly into another shut-down of some kind. Probably I should not say shut-down; I mean crisis. I am afraid the situation will call for spectacular action to release the energy that will be necessary. Perhaps the crisis will take the form of labor stoppage—perhaps a railroad or a mine strike or both.

"We have a terrible combination in labor these days, a bitter disappointment over the failure of the imagined benefits of the N. R. A., the ability of strikers to use unemployed as pickets, the unwillingness of all local government to protect strike breakers from pickets, the ability of pickets to damage the property of nonstrikers, the mobility of pickets in scattered industries, and the presence of a probable majority of sullen, disillusioned, spiritless and would-be radical citizens.

"Couple this with the fears and the lack of confidence on the part of many business people, and their inability to make their voice heard in Congress, and we have the makings of trouble. Not of revolution, for this people would not know whether to revolt. We are too much hypped by money radicalism to think of the radicalism of goods and services. So long as we are going to redistribute money, we will not get around to redistributing value, though we may destroy the savings of millions.

"If government can't accomplish the impossible, surely labor and all the other private leagues and associations we hear about can't. If Government doesn't deliver a more abundant life, all kinds of people acting in all kinds of ways are not going to. All they will create is confusion. Confusion will breed force. Out of it would rise the demand for responsibility in some quarter."

The CHAIRMAN. Is that an editorial or an article?

Mr. CAREY. I take it to be an editorial. It is from the March 23 issue of the magazine, and is signed by Mr. Moley, in the articles he has in the magazine Today over his signature.

I might add, I do not know the writer of the article; in fact, I never saw anything about it until I read it in this magazine yesterday.

The CHAIRMAN. Do these views express your own?

Mr. CAREY. Not exactly, sir. I am in the same position Mr. Moley is; I do not adhere to a great deal of that, but I just express it as representative of what is in the minds of a great many people, this man being described as wise "Liberal."

This shows the worry of the man who is described as "one of the wisest Liberals." I make the point, therefore, that if the bill we are discussing will harass business that it is unwise legislation. In this connection and as an indication of the feeling of the country at large toward unionization, I wish to bring to your attention the survey made last fall by the National Industrial Conference Board,

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which asked newspaper editors throughout the United States their opinion of the attitude of their readers on a number of vital questions, one of which was "Does public opinion in your community favor making membership in a labor union a necessary condition of employment?" The replies were 94 percent in the negative. Based on this, I say that if these newspapers editors are anywhere nearly right, it would be a seriously disturbing influence were this bill to be enacted, provided always the bill is, as seems evident, directed toward an increase in the position of organized labor.

Do not think from all that I have said above that I do not realize, or at least believe that I realize, the real meaning of this proposed legislation. I know that this bill does not necessarily stop an industrial council or company union that is not dominated by the management. I realize that individual dealing between employees and employers is not in specific terms outlawed by this measure. Unquestionably, however, in the opinion of businessmen, the effect of this bill would tend to do these very things. To what degree these trends would occur depends on so many factors that I believe no man at this time can make an accurate judgment. My point is that any trend toward the abolition of fair company unions or individual relationships between employees and employers is decidedly not in the public interest nor in the interest of the employees themselves.

We have already, with clause 7–A of the Recovery Act, had sufficient misunderstanding and misinterpretation. In fact, as everyone knows, 7–A has been interpreted differently by Government officials and by different elements of the public. It is absolutely certain that the unfair labor practices in this bill will be misinterpreted and that these misinterpretations will give rise to agitation, misunderstanding, bad feeling and the retarding of business, which is the very thing that the bill says it wishes to avoid. There is, furthermore, in this bill no provision allowing the employer to curb communistic influence in his own plant and there is, furthermore, in my opinion, in spite of the great danger in the United States of communism, no hope of writing provisions into the bill which would cover this point and which would not be subject perhaps to misuses and certainly to great misunderstanding.

It is, I believe, also certain that under the provisions of this bill it would be most difficult and almost impossible to change a majority rule once such a rule had been established in a plant. This factor, of course, is difficult to appraise since the attitude of the personnel of the Federal Board and of the local agents of that Board toward elections in a plant would have a great bearing. In closing this paragraph, I want to ask the rhetorical question, "Does not the attitude which organized labor has already taken toward this bill at least indicate that this proposed legislation will not give an entirely fair choice to workers as to how they will deal with their employers?"

It is unnecessary to take your time to outline in great detail what seem to be some of the unfair provisions proposed. It is certainly true, however, that there is no protection provided against employee domination or intimidation. With what we have been through, does it not seem evident to each one of you that the menace of employee

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domination is equally as great as that of employer domination? A startling instance of an attempt of this sort, with which you are all I think familiar, is the tragic case of Kohler of Kohler. Perhaps in making this point I should not deal solely with employee domination, since one of the startling facts is that outside agitators, not even connected with the plant, have in many instances fomented trouble and have participated in outrageous destruction of property and intimidation of employees who wish to work. There is, so far as I can find in this proposed legislation, no safeguard for a decent employer or his employees against this sort of racketeering. Another point that seems both unfair and unreasonable, and which by the way is connected with what I have said before about the necessity for local control of labor problems, is the fact that under this bill employers can be summoned anywhere to protect their interests whether there may be any real case against them or not.

I want to make the very definite statement that industrial councils can be, and in many instances are, entirely fair. In this connection I would like to read certain provisions from an industrial council plan which has worked satisfactorily for 16 years. I think you will all admit that if these provisions covering the guarantee of independence of action have been lived up to that there is no doubt that the men have no complaint on the question of domination. The fact is in this particular case that in 16 years there has been no question from anyone on this point.

I now would like to read to you from the constitution of the Yale & Towne Industrial Council as follows:

GUARANTY OF INDEPENDENCE OF ACTION

Every representative serving on the council shall be wholly free in the performance of his duties as such and shall not be discriminated against on account of any action taken by him in good faith in his representative capacity.

To avoid any possibility of such discrimination no representative shall be dismissed during his term of office, or for 6 months thereafter, before having the cause for dismissal submitted to and approved by the council. In the event of a tie vote in the council the matter shall be referred to the president of the company for final decision.

Nothing in this article shall give the council authority to have such dismissal submitted to it if the person to be dismissed refuses to have the council intervene.

To further guarantee to each representative his independence, he shall have the right to appeal directly to the president for relief from any alleged discrimination against him.

ARTICLE XV. NO DISCRIMINATION

There shall be no discrimination under this plan against any employee because of race, sex, political or religious affiliation, or membership in any labor or other organization.

I repeat that I realize that this bill does not propose directly to eliminate councils which are not dominated by the employer although as I have said before, it seems to me that even such councils would be in great jeopardy, for the reasons already given. The point I am trying to make now is that councils can be, and I believe on the whole, are entirely fair to the men and entirely satisfactory to them.

Although I have tried to make a forceful appeal for the rejection of this bill, I do not want it thought by anyone that I am opposed to organized unions. Every fair business man must realize, I believe,

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that such unions have a proper place in our economic life. For instance, when management is unjust to men in not giving them decent and proper pay based on the income of the business, the introduction of an organized union may well be beneficial not only to the men but to the competitors of that company. There are undoubtedly also certain types of shifting employment where men go from one employer to another and where, in order to preserve proper wage levels, union organization is almost necessary. I do maintain though, that in a well-run industrial institution, where men are receiving fair pay considering the general conditions in the industry and in the business in question, there is no reason why there should be placed on the men the cost of union dues. Furthermore, with the present reasonably conservative and reasonably constructive officers of the American Federation of Labor there is, I think, not great danger of an iniquitous misuse of funds collected from the workingmen. I think it is fair, however, to say that the difficulties which organized labor has already had with agitators should give you great concern about the desirability of passing a measure which, as I have tried to point out, would probably very greatly increase funds in the possession of organized unions. This is especially true because at present unions and union officials are not fully responsible legally.

I make the plea that decent employers who are, in my opinion, greatly in the majority both in numbers and in the numbers of their employees, should not be penalized because of the action of such unscrupulous employers as there may be. I say without qualification that employers who are not giving their men a thoroughly square deal considering the condition of their businesses should be curbed. It is evident that unfair treatment of employees is almost as disastrous to a fair competitor as it is to the employees who are being injured. In my experience, however, and I believe I know personally something of the conditions in a great many of the plants, both large and small in the United States, I have found very few executives who do not realize the basic necessity of giving their men a thoroughly square deal. Sound labor relations are based on confidence and mutual respect built up through years of constructive cooperation. Human nature is such that in most instances undue force on either side is not productive of the best results. Let us remember, that as between men, the application of the golden rule is what counts. Within individual plants proper labor arrangements are not in the largest sense built on legislation.

If you believe in the sincerity of what I have said, and if you concur in the force of the arguments herewith presented, I ask you, gentlemen, not to pass this legislation, which may well bring great strife and at the same time retard our business recovery.

The CHAIRMAN. Mr. Carey, what is your position with this company?

Mr. CAREY. I am president of the Yale & Towne Manufacturing Co., and I am also representing the board of directors of the National Association of Manufacturers, in this instance.

The CHAIRMAN. How long have you been president of this company?

Mr. CAREY. Since the end of 1932, and before that I was vice president and treasurer.

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The CHAIRMAN. Has your family been associated with this company for years?

Mr. CAREY. Not my immediate family.

The CHAIRMAN. Thank you, Mr. Carey.

Senator WAGNER. Mr. Carey, have you a written collective bargaining agreement with your employees?

Mr. CAREY. Yes; but they are different at the different plants.

Senator WAGNER. One in each plant?

Mr. CAREY. Yes; the reason for that being, if I may say, is that the men in the different plants have wished different constitutions, which were entirely agreeable to the employer; and also because each of them came into existence at different times.

Senator WAGNER. Yes; I can understand that. Is there any agreement signed by the representatives of the employees?

Mr. CAREY. It is not signed as such, but it is presented to them, and in fact, worked out with them.

Senator WAGNER. Is it a binding contract signed by both sides?

Mr. CAREY. There is no legal form of contract, it is just a continuous arrangement for working out all of the problems of any kind that come up between the men and the employers.

Senator WAGNER. The reason I ask is because I have not yet come across a case where a so-called "company union" is in existence and where there is a written contract binding both sides to certain conditions of employment.

The CHAIRMAN. Do you mean, Senator Wagner, that the collective bargaining between the representatives of the employees and of the employers in these company unions is not resolved to writing?

Senator WAGNER. That is what I inquired about, and apparently that has not been resolved to writing.

Mr. CAREY. Only in this sense, the minutes are kept of all the meetings, and the decision arrived at, and the manner of arriving at the decision, and those results are published in our plant organ so everybody can see them.

Senator WAGNER. You have no binding agreement that for a certain period you will pay your employees a certain wage.

Mr. CAREY. You are entirely correct in that, but may I say from my point of view, that is not constructive for the men themselves.

The attitude in which I approach that is this, that industry must be kept in existence for management as well as employees to get anything out of the effort they are going to put in that organization in the future. What we actually do is to go to our men, and they know almost as much about the finances of our business as I do. We tell them, we told them about the different types of business, talk about the cost, talk about the prices to which we are forced by competition, and I tell you, our men know thoroughly about what we are up against from the standpoint of competition from time to time, our profit and loss sheet, and the whole thing.

Senator WAGNER. What particular unfair labor practice in this bill would interfere with the relationship which you say now exists and is satisfactory to both sides?

Mr. CAREY. What I am afraid of is this, Senator Wagner——

Senator WAGNER. I wonder if there is any one of the unfair labor practices incorporated in this bill that would interfere with your relationship as you have stated it to us.

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Mr. CAREY. I don't think so, unless there were great misunderstandings and misinterpretations and all sorts of trouble. But, I do want to make this point in that connection, I do not care how fair any group of men is trying to be with its employees there is always bound to be some very small group of dissatisfied people who will make trouble. That is true even in the Congress of the United States, as you so well know yourself.

Senator WAGNER. Are the representatives of the workers in this council elected by ballot?

Mr. CAREY. Yes; by secret ballot.

Senator WAGNER. And those who receive the majority of the votes cast represent all of the employees in negotiating with their employer?

Mr. CAREY. That is correct.

Senator WAGNER. So that the majority rule prevails?

Mr. CAREY. In that particular sense, yes; and I don't know of any other way.

Senator WAGNER. I do not either.

Mr. CAREY. But I do not think it applies to what I presume your mind is running to. I don't know.

Senator WAGNER. I do not know whether it applies to your situation. Now, do you require that the representative of the workers must be a worker employed in your plant?

Mr. CAREY. Yes, sir.

Senator WAGNER. So that, under the constitution as it is now, the workers could not choose a representative outside of your plant even if they so desired?

Mr. CAREY. That is correct.

Senator WAGNER. Is there a provision in your constitution providing that it cannot be amended without the consent of the management?

Mr. CAREY. I do not know how to answer that question specifically. I think if the question would ever come up, there would be negotiations between the men and the management.

Senator WAGNER. Have you the constitution here?

Mr. CAREY. Yes; but I do not know whether that is covered in that way. The constitution states the following [reading]:

> Amendments to the constitution of this council may be proposed either by the council or by the management. The amendment proposed shall be presented to the council in writing, and when approved by it shall be submitted to the management for consideration. Upon approval by the management, the same shall become a part of the constitution.

Senator WAGNER. In other words, under this constitution the union cannot amend unless the employer consents.

Mr. CAREY. Yes; I think that is undoubtedly correct. May I ask you a question, Senator? Do you think any other arrangement is there when you have mutuality of purpose between employer and employee?

Senator WAGNER. Mutuality does not mean control, and I should say each group should be independent of the other if we are to have effective collective bargaining. So far as I can see, if this bill becomes a law, the only change in your situation will be that the workers will be at liberty to choose their representatives either from among your employees or from an outside organization.

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The CHAIRMAN. Mr. Carey, I have been interested in what you said about informing the representatives of your employees of the financial aspects of the business. I presume they are informed about the earnings.

Mr. CAREY. Yes; they are.

The CHAIRMAN. It has been my observation that such an attitude has been accepted by a great many employers during times of distress when they are not earning much money, but in periods of time when they are prosperous they are not so disposed; and I have observed more in the past, than in recent years, that a good deal of trouble between employers and employees has originated over wages, particularly because in prosperous times the employers do not make known that fact.

Has your observation been in accord with mine?

Mr. CAREY. I think as a general statement that may well be a fair statement. I do not think in our case or in a great many other cases it is true.

The CHAIRMAN. It would be better if that relation of frankness with reference to profits should continue when profits are made, as well as when losses are made.

Mr. CAREY. I should think so.

The CHAIRMAN. May I ask this question? Is the stock in your company held by a limited number of persons, or is it for general sale on the market?

Mr. CAREY. It is for general sale; it is listed on the New York Stock Exchange.

The CHAIRMAN. I think I express the opinion of the entire committee when I say we appreciate the able manner in which you have presented your case, and the favorable impression you have made. Thank you.

Mr. CAREY. I thank you for the opportunity of appearing before your committee.

The CHAIRMAN. Mr. Harrington, if you will please come forward we will be glad to hear you.

STATEMENT OF GUY L. HARRINGTON, REPRESENTING THE NATIONAL PUBLISHERS' ASSOCIATION

The CHAIRMAN. Your full name is Guy L. Harrington, and you represent the National Publishers' Association?

Mr. HARRINGTON. Yes, sir.

The CHAIRMAN. Does that organization consist of newspaper publishers or of magazine publishers?

Mr. HARRINGTON. It consists of magazine or periodical publishers.

The CHAIRMAN. How many members have you in that association?

Mr. HARRINGTON. One hundred and fifty members.

The CHAIRMAN. They have a central office here in Washington, and you are their representative?

Mr. HARRINGTON. They have a central office in Washington, but I do not have charge. Mr. Daley is their representative here in Washington.

The CHAIRMAN. In what capacity do you appear?

Mr. HARRINGTON. I am representing the National Publishers' Association.

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The CHAIRMAN. Where is your residence?

Mr. HARRINGTON. Greenwich, N. Y.

The CHAIRMAN. You may proceed with your statement.

Mr. HARRINGTON. This testimony is presented at the direction of the National Publishers' Association representing approximately 150 of the leading periodicals of the United States with a total combined circulation of more than 50,000,000 individual copies monthly.

Magazine publishers have a vital three-fold interest in any proposal affecting the wage earners of the country. They are interested in the welfare of the consuming public, largely made up of wage earners, upon whom they depend for circulations; they are interested in the welfare of the individual members of other industries upon whom they depend for advertising patronage and they are interested in the welfare of their own employees.

The bill under consideration relates to man's most important activity—the gaining of a livelihood. Accordingly a careful appraisal of its value and a measure of its future implications are of great importance.

Karl Marx advocated the following steps to State capitalism.

First. Encourage monopolies in industry.

Second. Organize and strengthen the hand of labor.

Third. When conditions fostered by these two steps made it impossible for industry and labor to longer cooperate, then the State would take over industry.

The provisions of the N. I. R. A. abrogating as they did in part the antitrust laws and permitting price-fixing and the limitation of production definitely tended to create monopolies in industry. We now have before us again for discussion a bill, the implied purposes of which are to organize and strengthen the hands of labor.

Is this bill, we ask, a second step in accordance with Karl Marx's philosophy of economics?

In the absence of any evidence that similar systems in other countries, either in the past or present, have contributed to the general welfare or raised the living standards of a single people and in view of the failure of the Government to successfully demonstrate under the N. R. A., the practicality of either directing or controlling the multiplicity of interlacing operations of industry through a central bureau and because this bill would in our opinion in effect impose an unwarranted, unjustified governmental bureaucratic control over the intimate details of employer-employee relationships, which are just as complicated as other industrial problems, we are opposed to it.

With the advent of clause 7–A of the N. I. R. A. granting employees the right to bargain collectively, the representatives of the American Federation of Labor either because of governmental encouragement or on their own initiative, although representing only a small percent of the wage earners of the country, attempted to assume the role of spokesmen for all labor.

Their efforts to gain union recognition as the sole bargaining agency for labor in individual industrial organizations resulted in an immediate tremendous increase in strikes the country over.

These strikes took place at a time when millions were out of work and the country should have conserved its resources to the utmost.

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They resulted in a tremendous money loss, the burden of which ultimately fell on the consumers upon whose increased purchasing power recovery depended.

This loss is directly attributable to clause 7–A. The responsibility rests with the American Federation of Labor and those who framed the law.

This is a glaring example of what frequently happens when government attempts to unreasonably regulate or control industrial relations and operations.

The mistake made nearly 2 years ago is still with us. The cause of these labor troubles—namely, clause 7–A, has not been removed. Established last year for the ostensible purpose of correcting the mistake, another bureaucratic body, the National Labor Relations Board, has admitted its inability to properly function in settling labor disputes and asks for more power. Evidently, to correct one mistake, another mistake has been made entailing a tremendous loss to industry in expense and time wasted in long, drawn-out, fruitless, and often justified hearings and investigations. How long shall we continue piling up mistake on mistake at a time when the production of each group of six wage earners in the country on the average is supporting one Government employee?

Those provisions in the present labor disputes bill of particular concern to periodical publishers are contained in sections 7 and 9.

Employers would be prohibited from dominating or interfering with the formation or administration of any labor organization. This, of course, has direct relation to the so-called "company union." What is meant by "dominate or interfere"? If employees asked the advice of their employer and received it, would that constitute interference? If an employer asked for the cooperation of his employees and was accorded it, would that constitute domination? Must he set up a fence between himself and his employees and thereby create a class distinction heretofore unknown in this country? These appear to be silly questions, but they are pertinent.

What is wrong with the company union or even a company-dominated union?

One of the stated purposes of this bill is "to diminish the causes of labor disputes." If an employer can, by encouraging his employees to organize a works council or some other form of employee association, secure a greater measure of cooperation and better understanding on their part, promote their welfare, and facilitate settling disputes, should he be prohibited from doing so? What about those company unions, the members of which share in their companies' profits? Shall they also be prohibited?

What alternative means, other than through one national organization—the American Federation of Labor, no matter whether it is well managed or badly managed in different localities and industries—do you leave open to both employees and employers to collectively bargain? The quickest way to start a guerrilla warfare is to tell the average American that he must do a thing a certain way. What difference does it make about the method providing the result is accomplished? Won't the competition between the A. F. of L. and company unions balance the situation and keep both methods clean? Few labor disturbances or strikes take place which are not called by the unions constituting the American Federation of Labor.

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This fact in itself should be conclusive evidence that the real solution to labor disturbances is the close cooperation between employer and employee to be secured through the works councils type of union rather than resort to the cumbersome inefficient, time-wasting procedure of handling labor relations through a permanent Labor Board, the very existence of which stimulates labor disturbances.

We recommend that you investigate and study the records of the present and past National Labor Board—not only the cases decided but the needless claims and disputes brought up.

To place in the hands of a labor board, which might or might not be prejudiced, the power to determine what constituted interference and domination in its varying degrees on the part of the employers located possibly hundreds of miles away, would in our opinion result in endless complications and disputes.

It is contended that real collective bargaining cannot or does not take place in the case of a company union. There seems to be no evidence supporting the need for the extension of collective bargaining in this country. The fact that this system is in general use in England and other countries does not commend its institution here. The living standards and working conditions of wage earners of all other countries are not to be compared with ours. Why should we have incorporated this principle in the N. I. R. A.? There is no evidence that it has contributed to the workers' welfare. While it has long been one of the tenets of the American Federation of Labor, there seems to be no good reason for us to force its adoption generally.

It is our observation that the average wage earner is not interested in joining any union—company or otherwise. Neither is he interested in collective bargaining. So long as he has a steady job, good pay, and good working conditions, he is satisfied and wishes to be left alone. When he wishes an increase in wages he wants to bargain with the boss himself. He prefers that condition to being a member of a union which can order him to strike for no advantage to himself. It is only under pressure or persuasion that the average worker joins a union. Why, then, all this excitement about collective bargaining?

Without collective bargaining, the percentages of the wage earners' share of the country's income has shown a constant increase in the last 30 years. In 1900, this division in the form of wages, salaries, and pensions was 53 percent. In 1929 at the country's production peak, it was 65 percent. During that period, hours of work decreased from 59 to 51 per week.

The workers' share of the national income has automatically increased in proportion to the increase in production.

In view of this record, why should collective bargaining be made obligatory? Even in England where collective bargaining is the rule, it is not mandatory.

That representatives for collective bargaining purposes shall be selected by a majority vote seems, when taken alone, a simple, reasonable provision. Coupled with section 7 granting employees the right " to engage in concerted activities " for " mutual aid " without restrictions, and with paragraph 1, section 8, making it unfair practice for an employer " to interfere with, restrain, or coerce employees

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in the exercise of the rights guaranteed in section 7", it becomes a menace to all open-shop organizations which represent more than five-sixths of the working population of the country.

Under these restrictions, an employer, in case of an election, would be "hog tied" and rendered completely powerless to protect his employees or himself against unfair practices on the part of inside or outside labor agitators. His employees would be subjected to threats, bulldozing, and intimidations on the part of representatives of any local or national labor organization.

Any election held under such circumstances would not and could not register the real choice of a body of employees, whether the election was held under the supervision of a labor board or not. These provisions would give the American Federation of Labor a tremendous advantage and we undoubtedly would have a repetition of the "big drive" initiated immediately following the enactment of the N. I. R. A. when the American Federation of Labor broadcast throughout the land through its labor organizers that it had been chosen as the sole bargaining agency for labor, and in a short time doubled its membership. Many new members secured at that time who had paid their initiation fees, which they could not afford, were later dropped for nonpayment of dues.

It definitely approves closed-shop agreements by which an employee who enters into an agreement with a union must refuse employment to persons not members of that union. Thus 51 percent of the employees can compel every other employee to join their organization and to pay dues into it.

It is interesting to note that at the present time there are about 2,800,000 members of unions affiliated with the American Federation of Labor who are paying dues. These dues average according to the best information available about $24 per year per member. Thus at the present time the gross revenues of those unions associated with the Federation is about $70,000,000.

This amount is enormously greater than revenues of any other organization in the country which devotes a goodly portion of its revenues to propaganda and organization.

It is estimated that there are between eighteen and twenty million employees in this country who might be forced to join the unions in case this bill became law. Should that come about the fund which would then be available for the use of the unions would be between four hundred and five hundred million dollars per year, which is a colossal sum to place at the disposal of one block of our population and which obviously could be used as the basis for tremendous political and social pressure for the benefit of this one group as against the balance of the citizens of the country.

We fully appreciate any contribution which organized labor has made to this country. It has without question been a factor in raising our living standards. In crucial periods, it has used its influence for the common welfare.

If, however, organized labor became too powerful it might prove a serious menace to our institutions. Under unprincipled leaders that would unquestionably be the case. It will always need the beneficial leavening influence of opposition. Threats of defeats at the polls against legislators should not be tolerated.

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Strikes when millions are out of work are strikes against the unemployed. The company union supplies the necessary check to organized labor's rise to a position of dangerous power. Union leaders know this.

For that reason company unions are an anathema to them. For the same reason the company union should be retained.

It is highly important to the welfare of this country that proper balance between the union shop and open shop be maintained.

If a measure of this nature is enacted into law, it is of the greatest importance that its provisions protect the workers of this country from coercion from any source.

In our opinion, this bill as it now stands, enacted into law, would result in the unionization of all industry in a short time.

At the present time an overwhelming majority of the printing plants in which magazines are produced are open shop. The skilled labor in these plants is more highly paid than that of any other industry with possibly one or two exceptions.

Magazine publishers must at all times be insured against a break in the continuity of their printing operations. The nonproduction of one issue would mean great loss and might result in the complete ruin of a profitable business which had required years to build. For that reason labor disturbances must be avoided. A very small number of printing plants are equipped to produce magazines of large circulations. A clause in many union contracts extends the privilege to union workers to refuse to handle "struck" work. In case the book and job printing industry became intensively unionized, magazine publishers would be entirely at the mercy of the unions whose actions are more often motivated by the spirit of mob psychology than by reasoning.

Our great concern regarding this measure can best be explained by a brief statement of what has taken place in recent years in New York City, which in the printing trades is highly unionized.

Prior to 1925 New York City was the great job and book printing center of the country. Since that time, there has been a steady withdrawal of printing plants and the printing of magazines to localities offering more stable labor conditions. This exodus really began after the strike of 1919 in the printing trades, when the ruin of several periodicals was seriously threatened. Ten large plants employing nearly 5,000 men and 195 publications are now located or printing elsewhere.

In many localities, the enforcement of drastic union-shop rules renders union labor inefficient. Two years ago, one large New York publisher offered his union labor 10 percent increase in wages if they would withdraw the seniority rule. Its elimination would have saved him 25 percent on his printing costs. His offer was refused and the plant sold.

Frequently, the complement of men required by union rules on a press or some other piece of machinery is beyond all reason. For years, the publisher of Outlook was forced to use 6 men to operate the press on which it was printed. On the removal of this press to a nearby city, it was easily operated by 3 men.

The inability or failure of the union leaders to eliminate the communistic "cells" in the union ranks is generally known.

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Because of these and other conditions, a majority of magazine publishers consider their interests in safer hands in open shops.

It would be impossible for any labor board to render fair decision in all cases arising under provisions of paragraphs 3 and 4 of section 7.

How could anyone determine whether discrimination had been made because of membership in a labor organization? How could an employer under some circumstances prove there had been no discrimination, even if there had not been?

If an employee once filed charges against his employer, he could never be discharged. Such an employee could always claim prejudice on the part of the employer.

Not only would the enforcement of these provisions tend to break down the morale and discipline of any industrial organization, but they would entail endless disputes and waste of time in their administration.

These provisions are characteristic of the drastic and impractical nature of the bill as a whole.

Last year, I made the statement before this committee that "The grave danger at this time is that labor will make greater demands than the recovery program at its present point can stand." That statement has now been fully substantiated.

Not only has union labor engaged in strikes at a time when with millions out of work it should have been a crime to strike because the losses entailed would retard recovery, but their demands for higher wages have resulted in higher prices for commodities, thus freezing the expansion of production, the only thing that will put the unemployed back to work permanently. To secure an expansion of production, the prices of commodities must be maintained at as low a level as possible.

Statistics of the operation of industry under codes, graphically demonstrate that shorter hours and higher wages will not promote increased production and accordingly, will not reduce unemployment.

Union labor is quite evidently, not interested in recovery. Higher wages is its first objective. To support labor in this objective by enacting this bill would permanently close the door to recovery.

Section 15 of this bill providing that nothing in the act shall be construed to interfere with or impede or diminish in any way, the right of employees to strike, really invalidates the main purpose of its provisions.

It is difficult for us to conceive how it would be possible for a labor board to enforce a decision against employees or a union under these conditions. From every viewpoint, this bill proposes to place industry absolutely at the mercy of labor, even to the point of destruction.

The employer, or capitalist if you wish, stands between his employees and the consumers of his product. The consumers dictate the price at which he may sell his product. Accordingly, in order to exist or insure a profit on his operations the employer must in turn be in position to control his costs including in a measure the prices he pays for labor and materials. To meet varying market and economic conditions, these costs must be elastic. Prices for labor in an intensively unionized labor market are highly inelastic.

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One of the outstanding characteristics of union-labor regulations is their rigidity. It would be impossible to maintain an equilibrium between wages and productivity in an intensively unionized country.

The least concern to us by no means is the persistence with which these attempts are being made to control, in detail, the labor relations of the thousands of industrial organizations of the country. This bill reflects nothing short of regimentation of industry. It stands no better chance in our opinion to succeed, than did the N. R. A., which is now snowed knee-deep under thousands of conflicting exceptions and office orders about trivial matters. And to what purpose? Is it to load production with a sufficient burden to strangle it entirely? What then?

The CHAIRMAN. I did not suppose members of your organization employed many employees as such. Do not the members of your association submit the printing of their publications to organized printers?

Mr. HARRINGTON. A number of our membership own their own plants. Some of them own very large printing plants, employing from 2,000 to 3,000, and up to 4,000 employees in their printing plant.

The CHAIRMAN. I did not know that condition existed. That is not general, is it?

Mr. HARRINGTON. No; that is not general.

The CHAIRMAN. Will the representatives of the Employees Mutual Benefit Association of the Real Silk Hosiery Mills please come forward?

STATEMENTS OF WILLIAM BAUM, FORREST BADDERS, AND ISADORE FEIBLEMAN, REPRESENTING THE EMPLOYEES MUTUAL BENEFIT ASSOCIATION, REAL SILK HOSIERY MILLS

The CHAIRMAN. You three gentlemen, Mr. Baum, Mr. Badders, and Mr. Feibleman, are here representing the Employees' Mutual Benefit Association, Real Silk Hosiery Mills?

Mr. FEIBLEMAN. Yes, sir. We are representing the association from the Real Silk Hosiery Mills, which is a company union in existence for 13 years.

The CHAIRMAN. Where is it located?

Mr. FEIBLEMAN. Indianapolis, Ind.; it has had plants elsewhere, one in Georgia.

The CHAIRMAN. Mr. Baum, where do you reside?

Mr. BAUM. In Indianapolis, Ind.

The CHAIRMAN. You are employed where?

Mr. BAUM. Real Silk Hosiery Mills, Indianapolis, Ind.

The CHAIRMAN. In what capacity?

Mr. BAUM. Personnel director and industrial engineer.

The CHAIRMAN. In that plant you have an organization known as the "Employees Mutual Benefit Association"?

Mr. BAUM. Yes, sir.

The CHAIRMAN. How many members has it?

Mr. BAUM. It has approximately 2,500.

The CHAIRMAN. That is what percentage of all of the employees in the plant?

Mr. BAUM. The total number is approximately 3,000 in the plant.

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The CHAIRMAN. Some do not belong?
Mr. BAUM. That is correct.
The CHAIRMAN. Nobody is compelled to belong?
Mr. BAUM. That is correct.
The CHAIRMAN. This is a company union?
Mr. BAUM. Yes; so called.
The CHAIRMAN. When was it organized?
Mr. BAUM. Thirteen years ago.
The CHAIRMAN. It effects representatives to engage in collective bargaining with the employer the Real Silk Hosiery Mills?
Mr. BAUM. Yes, sir.
The CHAIRMAN. How often do you have an election?
Mr. BAUM. Once a year.
The CHAIRMAN. Are the elections secret?
Mr. BAUM. Secret ballot; yes.
The CHAIRMAN. How many employees are chosen?
Mr. BAUM. There are 50 department directors, and an executive board that consists of 8 members, 4 of whom are selected by the employees and representing the employees, and the other 4 being appointed by the management to represent the management.
The CHAIRMAN. They settle all controversies between employees and employers?
Mr. BAUM. They settle everything pertaining to the employee from the time they are engaged until they leave.
The CHAIRMAN. You may proceed with your statement, Mr. Baum.
Mr. BAUM. I happened to overhear the testimony a few minutes ago in which Senator Wagner made the remark he had never heard of a contract between a company union and the company, but I am taking the liberty of informing him that there is such a contract between the Employees Mutual Benefit Association of the Real Silk Hosiery Mills and the company, for the purpose of collective bargaining.
The CHAIRMAN. What does that contract deal with—wages?
Mr. BAUM. It deals with wages, hours, and labor.
The CHAIRMAN. Is there a scale of wages set forth in the contract?
Mr. BAUM. The contract provides that wages must be according to the wages which must be approved by the E. M. B. A.
The CHAIRMAN. What is that?
Mr. BAUM. That is the name of the association, Employees Mutual Benefit Association, and we call it "E. M. B. A." The wage schedule is a contract between the company and the company union, and must be approved by the company union, which we call the "E. M. B. A."
Senator WAGNER. Is that contract approved by all of the employees?
Mr. BAUM. The executive board approves all wages.
Senator WAGNER. Which represents the employees?
Mr. BAUM. Yes, sir.
Senator WAGNER. In the election which is held, do those receiving the majority of the votes become the representatives of the association?
Mr. BAUM. That is right.
Senator WAGNER. So that you have the majority rule in effect?
Mr. BAUM. That is right, we have the majority rule; I was going to come to that.

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The CHAIRMAN. Could you give us a copy of your contract?

Mr. BAUM. We do not have it with us. I am sorry.

Mr. FEIBLEMAN. We will be glad to see that it is sent to you.

The CHAIRMAN. There is no reason why you should not give it to us?

Mr. FEIBLEMAN. None at all, Mr. Chairman.

Mr. BAUM. About 13 years ago when the Real Silk Hosiery Mills at Indianapolis, Ind., was a very small concern, it considered the advisability of establishing a so-called "mutual-benefit association" for the purpose of giving the employees a certain insurance and other benefit, and also to bargain collectively with the company. At that time the company was engaged in the manufacture of seamless hosiery, and at that time there was no outside labor organization or any union in that particular industry. So the organization was voluntary, and was not considered as started against any outside organization.

Mr. Fiebleman has the bylaws with him, and they can be furnished.

The CHAIRMAN. Do the members pay dues?

Mr. BAUM. The employees pay dues and are then entitled to insurance.

The CHAIRMAN. What dues do they pay; does it vary with the amount of wages they receive?

Mr. BAUM. No, sir.

The CHAIRMAN. How much are the dues per week?

Mr. BAUM. It is 60 cents per month for each employee.

The CHAIRMAN. What are the benefits?

Mr. BAUM. They are death benefits.

The CHAIRMAN. Are there any sick benefits?

Mr. BAUM. We used to have that, but when the depression came we had to drop it.

The CHAIRMAN. What are the death benefits?

Mr. BAUM. We pay $1,000.

The CHAIRMAN. So that whenever a member dies his dependents are given $1,000.

Mr. BAUM. Yes, sir; but some employees are entitled to a higher benefit, up to $4,000, if they pay the corresponding higher premium.

The CHAIRMAN. What are the assets of your company now?

Mr. BAUM. Of the Real Silk Hosiery Mills, or the association?

The CHAIRMAN. I mean the association.

Mr. BAUM. It is approximately $14,000 to $15,000.

The CHAIRMAN. Available at the present time?

Mr. BAUM. Yes, sir.

The CHAIRMAN. How many deaths do you have a year, approximately?

Mr. BAUM. Not more than perhaps 10 to 12.

The CHAIRMAN. Do you sometimes have to make a special assessment?

Mr. BAUM. No, sir; not so far.

Mr. FEIBLEMAN. Mr. Chairman, I might explain this payment of $1,000 into the group insurance, and does not come out of the E. M. B. A. treasury. It is group insurance carried with the Prudential Life Insurance Co.

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The CHAIRMAN. I understand. You pay so much a month to an outside insurance company?

Mr. FEIBLEMAN. Yes, sir.

The CHAIRMAN. But the premium you pay comes from the employees?

Mr. BAUM. Yes, sir; it comes from the employees.

The CHAIRMAN. And about 2,500 members belong to this association?

Mr. BAUM. Yes, sir.

Senator WAGNER. If an employee leaves or is discharged, do you reimburse him for whatever he has paid into the fund?

Mr. BAUM. According to the agreement between the E. M. B. A. and the insurance company, such employee who leaves the company has the right to change the group insurance into an individual insurance without a medical examination; there is no consideration. That is under the group insurance, and the rate is very small.

Senator WAGNER. It would seem that your plan limits the mobility of the worker because when he leaves he forfeits the right to insurance.

Mr. BAUM. You must understand it is all voluntary, and a number of people do not avail themselves of the advantage, because they do not have to do it unless they so desire.

Senator WAGNER. How many employees do you have in this association?

Mr. BAUM. Two thousand five hundred.

Senator WAGNER. What percentage is that?

Mr. BAUM. It is 82 percent.

The CHAIRMAN. We are particularly interested in the relationship of your association to the employers with respect to collective bargaining.

Mr. BAUM. The constitution and bylaws of that organization provide all matters pertaining to wages, hours of labor, employment, discharges, transfers, and promotions must be approved by the executive board, and that all matters pertaining to wages are subject to the approval of that board. It is not collective bargaining in the sense that we read it in the literature, but it is a matter of getting together and considering the advisability of making the wage increase or a wage decrease.

Senator WAGNER. Then it does differ from the ordinary collective-bargaining agreement?

Mr. BAUM. We have, yes; in this sense, that no wage can be introduced without the consent of the labor organization.

Senator WAGNER. Does the agreement itself set forth the exact wage that is to be paid to the workers?

Mr. BAUM. I think it does, but I haven't read it for such a long time, I am not aware, and we are not prepared to answer such a question, but we will send that to the committee.

As I stated before, the executive board consists of 8, 4 of whom are elected from the employees and 4 are elected or appointed by the management. In many respects the operation of this organization anticipated the provisions of the N. R. A., and in some respects the Wagner bill, but I am here as a representative of the E. M. B. A., which in its meeting last Wednesday voted unanimously to send two representatives, myself and the other gentleman, and it is my

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intention to inform you that the relations between the company and the employees during all of these 13 years were unusually harmonious.

The employees during the emergency did not lose their jobs, they were employed 100 percent, though at somewhat reduced hours and reduced wages, but there were no lay-offs.

However, the situation became a little disturbed after the N. R. A. went into effect, and an outside labor organization claimed that the E. M. B. A. was interfered with or dominated by the company.

The CHAIRMAN. When was this claim made?

Mr. BAUM. That was about August or September of 1933.

The CHAIRMAN. That was since 7–A was enacted?

Mr. BAUM. Yes; since 7–A went into effect. The company, not caring whether it bargained collectively through a company union or with Federation of Labor union, requested the N. R. A. officials to have a secret vote taken under its jurisdiction, because the company was informed that there was certain agitation, and there were outside meetings, and as we wanted to attend to business and not spend our time on these questions, we wanted to have it decided once and for all where our people stood.

Such a vote took place in October 1933, under the direction of the N. R. A., and it was agreed to by the N. R. A., and the company union, and the company, all of the details of the vote being worked out by these parties. The result of this secret vote was that approximately 2,000 employees were in favor of continuing the collective bargaining through the company union, the one they organized; in other words, a majority of the employees voted for the company union, and the E. M. B. A. won that vote.

Senator WAGNER. Do you mind an interruption?

Mr. BAUM. No; not at all, Senator Wagner.

Senator WAGNER. What prohibition of an unfair labor practice is there in this proposed bill which interferes with your organization—by the way, are you a workman of somewhat the higher class?

Mr. BAUM. I am somewhat higher, if you want to call it that.

Senator WAGNER. What is your position?

Mr. BAUM. I'm the industrial engineer and personnel director, and I am a member of the board.

Mr. FEIBLEMAN. But you are not a stockholder in the company.

Mr. BAUM. That is correct; I am not a stockholder.

Senator WAGNER. What is there in this bill which will interfere with the continuation of your organization?

Mr. BAUM. I have read the bill and the days come back to me when we were——

Senator WAGNER. If you will pardon the interruption, I would like to know what particular provision interferes with your organization.

The CHAIRMAN. Just a moment; Senator Murray would like to ask a question.

Senator MURRAY. I would like to inquire whether you represent the management or the employees.

Mr. BAUM. I represent the executive board of the company union. On the board, I represent the management.

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Senator MURRAY. Were you selected to your present position from the employees; were you engaged in working in the factory before you were elevated to your present position?

Mr. BAUM. Not at the Real Silk Hosiery Mills.

The CHAIRMAN. You came to this position from the outside; you were not an employee who was elevated to this position.

Mr. BAUM. That is correct.

Senator WAGNER. Now I understand the situation.

Mr. BAUM. The other gentlemen here represent the employees.

Now, the objection is this, if I may answer your question, Senator. Under this bill the outside labor organization will undoubtedly say this organization we have is dominated by the company, or is interfered with by the company. They have done so in the past, as to such an organization, and it has never been proved. In this case it would go to the board, and it would be left to the discretion of the Labor Board to say whether the company interferes or not, and it might eventually lead to the abolishment of this organization. That is what we fear.

Senator WAGNER. You have no faith in officials doing justice according to the evidence submitted?

Mr. BAUM. I have that very much so. As a matter of fact, I was brought up to look up to authority, and I, like yourself, Senator Wagner, was born in Germany. I lived there, was brought up to respect authority, and lived up to it; but I have seen enough of life in this country to know that if a labor board happens to be unfriendly to nonunion employees, it could easily find ways and means of saying there is interference.

Senator WAGNER. That is the basis of your argument?

Mr. BAUM. That is the basis.

The CHAIRMAN. You were about to tell what happened after this election, and we would like to have you proceed with that.

Mr. BAUM. This election, as I said, resulted in a majority vote for the company union, and in spite of the fact that all of the parties agreed to abide by this election, within 7 months after the election the representatives of the labor union presented a closed-shop agreement to the management with the request of signing it by midnight on that same day.

The CHAIRMAN. In other words, you claim the minority group were among the employees that presented this mandate?

Mr. BAUM. That is right; the members belonging to the union.

The CHAIRMAN. Did this minority group actually form a labor union of their own?

Mr. BAUM. They established a branch of the Federation of Full-Fashioned Hosiery Workers.

The CHAIRMAN. After the election, then, you had this employees' association that was endorsed by 2,000 votes, and another organization composed of a lesser number.

Mr. FEIBLEMAN. That branch he has referred to had been in existence for a number of years.

The CHAIRMAN. What is the membership of that?

Mr. BAUM. I don't know, and they don't tell, but my guess is between 200 and 300.

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The CHAIRMAN. They presented this closed-shop contract?

Mr. BAUM. Yes; and the company said, in view of the agreement with the Government and the company, and it could not sign such an agreement, because it was bound by the result of the vote.

Thereupon, one unit, namely, the knitters, went on strike, a very disastrous strike, and a very violent strike, causing the employees untold losses, and causing the company untold losses.

The CHAIRMAN. How long did it last?

Mr. BAUM. It lasted 7 weeks.

The CHAIRMAN. How was it settled?

Mr. BAUM. It was settled here in Washington by the National Labor Board.

The CHAIRMAN. By what decree?

Mr. BAUM. By the decree that the strike is over, that the men go back to work as soon as work is available, and that those who were found guilty of violence would not be taken back, and that the E. M. B. A. represent the majority of the rule.

Senator WAGNER. That was satisfactory, was it not?

Mr. BAUM. It was satisfactory and fair, but it was not fair to the minority for them to still claim that the company union has any right of existence, and if the Wagner bill goes through, the company union will be thrown out in no time.

Senator WAGNER. Of course, one can say anything, but I wish you would devote yourselves to what is there in the proposed bill that will do it.

Mr. FEIBLEMAN. Would the American Federation of Labor say if under the terms of this bill the mill and the E. M. B. A. would sign an agreement that nobody except a member of the E. M. B. A. could be employed, making it a closed shop under this bill?

The CHAIRMAN. You can do that under this bill.

Senator WAGNER. That would be a legal agreement, under this bill.

Mr. FEIBLEMAN. It is contrary to the whole foundation of the E. M. B. A., which has made itself a voluntary organization throughout the many years.

The CHAIRMAN. There is nothing in this bill which would prevent the minority from continuing their agitation just as they did after the vote was taken and even after the decree was entered, because I assume, as you say, they have taken up agitation for a trade union.

Mr. FEIBLEMAN. Mr. Chairman, if you please, I think there is this in the bill that is germane to the discussion at this time, if you will permit me to state it.

The CHAIRMAN. Yes; you may proceed.

Mr. FEIBLEMAN. It is this, that the Board is to determine whether there shall be a unit election or a vertical or interplant election. If the Board is given that determination instead of the employees, you are going to have a constant recurrence of this situation, like the one that took place last year, and this strike.

The CHAIRMAN. In other words, it would be possible for a trade-union organization to control a majority of employees in one unit who would be a small minority of the whole plant.

Mr. FEIBLEMAN. That is the situation.

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The CHAIRMAN. And if they are permitted to engage in connection with that in collective bargaining independently, they could proceed to make exactly that situation that might tie up the whole plant, and which would not be approved by the majority.

Mr. FEIBLEMAN. That is correct. It is an important group like the knitters, where the whole thing was locked up.

Senator WAGNER. What would you say about that?

Mr. FEIBLEMAN. I would say each plant should be determined by the plant. If you want any majority rule, it should not be the majority of a small unit, but a majority of the entire plant, and if 2,000 men want to keep on working 500 men should not have the power to stop them.

Senator WAGNER. Of course, you have got to lodge somewhere the responsibility for deciding the question as to how an election shall be held. I believe the least partial body, the Government, is the proper agency to decide that, rather than the employer or the employees.

Mr. BAUM. For our part, for the last 15 years the employees wanted to be represented by the entire body.

Senator WAGNER. The election held by the National Labor Board was held in the entire plant.

Mr. BAUM. That is right.

Senator WAGNER. The Board held that would be the fair way.

Mr. BAUM. That is correct.

Mr. FEIBLEMAN. Yes; somebody might come along and say it is not fair, and that they want it by units.

Senator WAGNER. But if the question has been decided by the Government through this Board, you have the prestige of an official body having passed upon the question.

Mr. BAUM. I may say this: I have had several experiences with the old National Labor Board, and I have nothing but the highest regard and respect for their desire to be of service to the country, the employer, and the employees. I am speaking only from my past experience, and I don't know whether in the future that can be continued on account of certain pressure that is being brought upon that Board.

Senator WAGNER. I was a judge before coming here, and I never could satisfy both sides with my decisions; one side thought I was an eminent jurist, and the other side did not think quite so much of me. My experience was the same on the National Labor Board—when we decided one way, the other side criticized us. As a matter of fact, while the industrial members on that Board were among the leading employers of the country, with one or two exceptions, our decisions were unanimous. We had men like Mr. Teagle, employing 300,000 workers, and Mr. Swope, representing the General Electric, with I don't know how many employees, and Mr. Clay Williams. We all agreed upon these decisions, but even with the industrial members agreeing, we could not satisfy the employers, as a rule. Sometimes they said it was fair, as you did today, when the decision was against them, but the general human experience was that you could not satisfy both sides.

Mr. FEIBLEMAN. Will you permit a statement, Mr. Chairman?

The CHAIRMAN. Certainly, Mr. Feibleman.

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Mr. FEIBLEMAN. As I understand the present bill provides for representatives both of industry and of labor, and I think the 1934 bill did, but this new bill does not.

Senator WAGNER. That is correct, it does not.

Mr. FEIBLEMAN. Is there any reason for that?

Senator WAGNER. I would say the reason for that is that the concensus of opinion is that only the public should be represented.

The CHAIRMAN. Do you favor representation of labor and the employer?

Mr. FEIBLEMAN. I think that probably would be better.

The CHAIRMAN. You have pointed out your views about it on this matter under discussion now, but suppose we had no legislation at all, and that the organization in the knitters' union, which I understand is a small minority of the employees, there decided that if then in the relationship they may have with the employer they can cause a strike and tie up the whole plant.

Mr. BAUM. That is correct, Mr. Chairman; they can do that.

The CHAIRMAN. It is my judgment, even if this bill existed, and even if you have a majority of the employees bargaining with the employers, and the knitters are dissatisfied, they could strike. Am I correct?

Senator WAGNER. Yes.

Mr. FEIBLEMAN. As I understand the agreement, there can be no action except by the direction and sanction of the new board for injunctive relief, and no proceeding in law or equity can be brought.

Senator WAGNER. The bill is limited to unfair labor practices, and it does not take in everything else.

Mr. FEIBLEMAN. I think the labor practices should be broadened to include unfair acts of labor organizations against the employer. I think this is one-sided, and it is a poor rule that does not work both ways.

Senator WAGNER. Yes.

Mr. BAUM. Employees do things against the management that they should not do.

Senator WAGNER. If there is any intimidation or violence or threats of violence, you can go into the courts today and get your injunction.

Mr. FEIBLEMAN. What is the situation in a case we have right now? There is a strike at Terre Haute, where, as I understand, the outside union came into the plant and there are now 468 people on strike. Giving this as hearsay, I am informed that those busy in organizing the union said to those who were employed at the plant, either you must join this union, or, if you do not, we will have a closed shop here and you will lose your job, and in that method they prevailed upon the people to join the union. When the matter comes up before the Regional Labor Board, they say the law doesn't say anything against us coercing or intimidating the employees, but it is only on the part of the employer, so the employer cannot complain.

Senator WAGNER. It depends on what you mean by coercion. Courts have said that the moment you have a picket anywhere near a plant, that is coercion. Courts have authority to deal with the question, and, of course, you know that as a lawyer.

The CHAIRMAN. Of course, this natural right on the part of the employer to hire and discharge whoever he sees fit is a fundamental

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right upon the part of the employer, just as much as it is a fundamental right upon the part of the employee to work or not to work. If that right exists in one employee, it exists in a hundred, or in a thousand, and they can walk out on a strike at any time, and nobody can prevent that, because a man can leave his work any time he sees fit.

Now what this bill says is that this right on the part of the employer is going to be stopped in certain respects, that he cannot exercise that natural right to discharge a man because the man chooses to join a labor organization, that he cannot discharge that man or a group of men because they do organize into a union, that he cannot discharge that man or the representative of that man because they do elect representatives and ask the employer to bargain with them.

That is about all it says, and it does not take away the fundamental natural right of the employer except in these few specific instances, the four named in the bill, and it says the right of the employee to organize is so inherently in the public interest that the employer cannot raise objection to it.

Mr. FEIBLEMAN. As I understand, if a collective-bargaining contract is made, the employer is expected to be bound by it and abide by it, and he would be guilty of an unfair practice if he did not.

Now any rule, if it is a good rule, should work both ways, and if that collective-bargaining contract is formulated and is made for the entire plant, shall one unit have the right to disregard it?

The CHAIRMAN. As I read this bill, if an agreement of collective bargaining is entered into, by the representatives of a majority group with the employer, and a minority group chooses to strike, they can do so.

Senator WAGNER. This bill does not go beyond that. As a matter of fact, it seems to me you would get a distinct benefit out of legislation of this kind, because of the judicial determination as to who represent the majority of the workers.

Mr. FEIBLEMAN. Do I make my point clear, that if you have that majority vote, that the vote should be determined, that the manner of the vote should be determined on the unit so as to protect it from being broken by the other smaller unit, or any of them, and in the agreement, if the agreement is made should not both sides be bound by it?

Senator WAGNER. That is quite correct; they should both be bound.

Mr. FEIBLEMAN. But there is no relief on the part of the employer, there is no right of injunction relief.

Senator WAGNER. You have that right already.

The CHAIRMAN. The theory of this bill is to take such steps and permit such steps to be taken to lead up to collective bargaining. It does not go to the point of this, that the employer must make a bargain, and does not go to the point of where he chooses to make a bargain the employees must live up to it. It assumes collective bargaining will remove a good many of the difficulties and preferably prevent strife.

But, if the employer refuses, his men can strike or not strike, and if the sense of the minority group was not to accept this, it is presumed they would have the right to act as they see fit, and there is nothing in this bill to prevent it.

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Mr. FEIBLEMAN. One of the points I am trying to make, and I may not be stating it clearly, or effectively, is this, when a plant has voted in its entirety, and there has been a majority vote, I say it is wrong that a board should say no, we do not want that vote by the entirety, even though 2,000 employees voted that they wanted the company plan, and a unit of 500 could be permitted to control the entire factory.

The CHAIRMAN. You cannot take away from a man the natural right to refuse to work. You can say, here is an agreement entered into by a majority vote with the employer, and if anybody does not live up to that, and if anybody thinks that is slave wages, or thinks conditions are unfair, he has still got to stay at his work. You cannot do that. If I have four servants in my house, I cannot make an agreement with three of those servants and by that agreement bind the fourth one. If he says he will not stay on that agreement, I cannot bind him in that way. The right to quit must be there.

We agree with you on the moral aspects of it, that if a majority of the employees choose to have representatives and in good faith they do make a bargain, under moral laws and moral sense of propriety, they should live up to it and carry on the agreement as long as it lasts.

But we are confronted with the question of whether we shall take the legal steps to force the employees to subject themselves to employment wages and conditions which he is personally unwilling to take, and 50 or 100 more are unwilling to take.

Mr. FEIBLEMAN. The point I want to make, Mr. Chairman, is this, if the plant has entered into a vote, and the majority of those employees have voted for a certain collective bargaining, then I say the right to determine whether there should be a vertical plan, or a unit plan in that plant, should be determined by the employees and not by your board. That is the point I want to make.

The CHAIRMAN. That is the point I want to make.

I suspect the final determination of this Board of those circumstances; it will at least do nothing to the employer after he has done that, and that it would use its influence to make the minority accept the agreement of the majoriy as to the collective agreement, so far as they could, but if this minority group says they will not work under such an agreement, they can stop.

Senator WAGNER. It is very difficult for employers and employees to agree on how these elections shall be held. In most cases the Labor Board finally gets an agreement, but there is a controversy about it.

Mr. FEIBLEMAN. The Government determined that, and that is all right; but I think the employees should have the right to say whether the vertical plan shall apply to the plan, or whether the unit plan shall apply.

Senator WAGNER. As a matter of fact you know that the employees' desire will be followed in nearly every instance. This is not an employer's matter at all.

We never had any great difficulty in working out how these elections should be held, and the only controversy we have had was as to whether there should be an election or not.

Mr. FEIBLEMAN. If you have a board that is not representing both industry and labor, that may run one way or the other. You will

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have necessarily opinions that will go in accordance with the most people.

Senator WAGNER. The labor representatives here agree with you because they have urged this committee to change the proposed law so as to have both industry and labor represented.

The CHAIRMAN. Mr. Badders, you are one of the gentlemen appearing here representing this Employees Mutual Benefit Association.

Mr. BADDERS. Yes, sir.

The CHAIRMAN. What is your name?

Mr. BADDERS. Forrest Badders.

The CHAIRMAN. You are employed by the Real Silk Hosiery Mills?

Mr. BADDERS. Yes, sir.

The CHAIRMAN. You live in Indianapolis, I assume?

Mr. BADDERS. Yes, sir.

The CHAIRMAN. What is the nature of your employment?

Mr. BADDERS. Knitter.

The CHAIRMAN. Were you elected as the representative of the Employees Mutual Benefit Association?

Mr. BADDERS. Yes, sir.

The CHAIRMAN. What do you call the position you occupy?

Mr. BADDERS. The one I am on now is on the executive board.

The CHAIRMAN. Was there some other board you were on?

Mr. BADDERS. No; I was a department representative.

The CHAIRMAN. How did you get elected to that?

Mr. BADDERS. By secret ballot.

The CHAIRMAN. A ballot from the knitters alone?

Mr. BADDERS. Yes, sir.

The CHAIRMAN. First you were elected from the knitters alone, on a departmental committee, and now you are elected as a director of the whole organization?

Mr. BADDERS. Yes, sir; that is right.

The CHAIRMAN. What are the functions of the departmental board you are on?

Mr. BADDERS. It is not a board, but in case any employee has a complaint, they will come to me.

The CHAIRMAN. Are there representatives of the management on that departmental board also?

Mr. BADDERS. No, sir.

The CHAIRMAN. It is just representatives of the knitters?

Mr. BADDERS. Yes, sir.

The CHAIRMAN. To whom do you bring these grievances after you consider them?

Mr. BADDERS. The representative tries to straighten them out with the management, and in case it cannot be done, it goes to the executive board.

The CHAIRMAN. Of which you are now a member?

Mr. BADDERS. Yes, sir.

The CHAIRMAN. You were elected in a secret election?

Mr. BADDERS. Secret ballot; yes, sir.

The CHAIRMAN. What do you want to say to us about this bill? I suppose you are in favor of your present organization and want it retained, and do not want this legislation to interfere with it?

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Mr. BADDERS. Well, we just want to stay where we are; we are satisfied.

The CHAIRMAN. You think the majority of the employees are satisfied, and you do not want us to pass legislation that will interfere with your rights to proceed as you are now proceeding?

Mr. BADDERS. That is correct.

Senator WAGNER. In what way does this proposed bill interfere with your organization?

Mr. BADDERS. I think it should be left up to the employees to decide whether they want the company union or the outside union.

Senator WAGNER. In what respects does this bill interfere with that right?

Mr. BADDERS. Since you have explained it, I do not think it does. The only thing is, I do not think there should be units, and I think the majority should rule, like it does right now.

The CHAIRMAN. You think some steps should be taken to prevent a unit being able, by not cooperating with the Employees Mutual Benefit Association, to cause a strike to tie up the whole plant?

Mr. BADDERS. Yes. sir; that is it.

The CHAIRMAN. You think everybody should be bound by the majority of all of the employees, who would be assumed to deal fairly with all of the employees.

Mr. BADDERS. Just like that is now; that is, the majority want it.

Senator WAGNER. Let me say, since it has been brought up, suppose the employer has three plants nearby one another, but the workers in one plant are not acquainted with the employees of another. If we adopt a theory that all of the employees of these three plants must have one election to select the representatives of the workers, then you are going to have men in this plant that may be required to vote for a man that they do not know anything about in the other plant. I am talking about the difficulty in setting up in a general law under what type of conditions an election will be held, because there are so many different conditions, and that is why there had to be lodged somewhere the responsibility, and the question now is whether an independent governmental board can do it much better than the employees or the employers.

Mr. FEIBLEMAN. I should think then where there are separate and distinct plants, not located together, there should be separated plant units.

Senator WAGNER. Who is going to decide that?

Mr. FEIBLEMAN. The law can provide for it.

Senator WAGNER. You mean have the law provide that elections shall be had in each plant?

Mr. FEIBLEMAN. Yes.

Senator WAGNER. Then it would present this difficulty, that there may be in one plant different types of workers that have no relation to the others; for instance, one type must have a different type than the other, where the wages paid to them, and the conditions of their employment, are entirely different from the conditions of the other workers.

Mr. FEIBLEMAN. There is, of course, that condition.

The CHAIRMAN. Do you think there would be objection to outside mediators coming in?

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Senator WAGNER. Yes; when you do put outside mediators in from the union, or the labor organization, they do know their conditions.

Mr. BADDERS. In our case we have our departmental representatives and they all know the conditions in their one department.

Senator WAGNER. Does your constitution provide that you can have as the representative of the workers only someone actually working in the plant?

Mr. BADDERS. Yes, sir; it does.

Senator WAGNER. You cannot elect an outsider?

Mr. BADDERS. No, sir.

Mr. FEIBLEMAN. There is an arbitration clause, and that is the board representing the management, and the board representing the employees cannot agree, then two arbitrators are chosen, one from each side, and those two select a third, and that decision controls, so far as concerns the two arbitrations, since this organization was formed, 13 years ago.

The CHAIRMAN. I will ask Senator Wagner this question, because I think you are interested in the answer, affecting the objection you have in your mind. Would the fact that the board of directors of this mutual association sit in with—and I assume are obliged to negotiate with the directors from the management, make this a company organization, and dominated or controlled by the management.

Senator WAGNER. I suppose that at the actual contract stage some representative of the employer must be present to bargain for him.

The CHAIRMAN. I believe "interference" has not been stricken out, but "restrained" is.

Senator WAGNER. The second section of the unfair labor practices is that which prohibits the employer from dominating or interfering with the formation or administration of any labor organization or to contributing financial or other support to it.

Mr. FEIBLEMAN. In that connection, I will ask Mr. Badders, "What do you receive in pay as a knitter?"

Mr. BADDERS. Around an average of $50 per week.

Mr. FEIBLEMAN. What was it during the worst time of the depression—assuming we are out of it now?

Mr. BADDERS. We were working short hours, and I imagine we were running around $35.

Senator WAGNER. Are you paid anything for your representation on this board?

Mr. BADDERS. They pay 5 percent, but that is for the time lost in the organization.

The CHAIRMAN. Do you mean 5 percent of the week's wage?

Mr. BADDERS. Five percent of what I make in dozens that I run.

The CHAIRMAN. What do you mean, by the hour or piece?

Mr. BADDERS. By the piece.

The CHAIRMAN. Let us see how it would work out. If you earn $4 in 1 day, the company would pay you 5 percent of that?

Mr. BADDERS. Yes, sir.

Mr. FEIBLEMAN. That is compensation for the time taken away from his work?

Mr. BAUM. I can explain that for you. At the time this organization went into operation the representatives complained to the board that when they were taken away from their machine they

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would lose what is usually called the "ultimiticity", they get away from everything, and after they have attended to the representation business, they go back to the machine and they have to start again. Therefore, they say they lose money by it, and then the board decided they would give 5 percent allowance on their week's run.

The CHAIRMAN. So if this man ran $50 he would get $2.50 for being a member of the board?

Mr. BAUM. That is right.

The CHAIRMAN. Would he get that whether they met every week or not?

Mr. BAUM. We do meet every week.

The CHAIRMAN. What is the day of the meeting?

Mr. BAUM. Wednesday.

The CHAIRMAN. How many hours are consumed in the hearings?

Mr. BAUM. It is according to what has to be done, but it is generally about 1 hour.

The CHAIRMAN. Then if it was only about 1 hour, he would get $2.50 for that 1 hour spent that week, or whatever time in addition may be taken away from his work.

Mr. BAUM. Yes; that is correct.

Mr. FEIBLEMAN. Let me just make this further statement. This Mutual Benefit Association is purely a voluntary association on the part of the employees, and at their own expense. They took it up with the company to pay the expenses, and the company declined to do so, so that they are entirely on their own initiative and at their own expense.

Now, without taking up the bill section by section, there are a few suggestions I would like to make.

I think in the definition of an employee I think it might be well to exclude employees who have been found guilty of acts of violence; in other words, a man who is out on strike is continued to be an employee, and I think if he is found guilty of violence his employment should cease.

Section 9 in the definition says that the term "labor dispute" includes any controversy regardless of whether the disputant stands in the proximate relation of employer and employees, and I ask whether any outside organization of any character can come in there and constitute a labor dispute?

Senator WAGNER. That is recognized by the Norris-LaGuardia Act, from which that was taken.

Mr. FEIBLEMAN. It also provides that the member who makes the investigation is not disqualified from sitting in a later hearing, and it would seem to me to put him in the position of being both prosecutor and court. And also in connection with section 10, as I understand it, they can take up matters on their own motions rather than waiting for some complaint, so that it makes them a grand jury, a prosecutor, and a court, all three, and it seems to me that this is entirely too broad.

We have already discussed the matter of financial aid, in connection with the fact that this company has been paying insurance.

The CHAIRMAN. How much is that?

Mr. FEIBLEMAN. Not a large amount, but I think it is something like 5 cents to each 60 cents.

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Mr. BAUM. Mr. Chairman, I can explain that. The employees paid 60 cents per month, and then the rates of the insurance company were raised on account of the depression and the employees earning less money; since that time the company paid the difference, which is 9 cents, the rate being 69 cents as against 60, and the company paying the 9 cents difference.

The CHAIRMAN. Of course, assuming that the employees should sometimes decide to have a trade union, that would not prevent them from carrying on in your Mutual Benefit Association just as you are now. It would leave out your insurance in the collective bargaining, but it would not interfere with the insurance plan which you are now carrying on.

Mr. FEIBLEMAN. As long as this labor organization has the right to bargain under this law, it is not supposed to get any support from the mill.

The CHAIRMAN. So far as this insurance is concerned, it would not interfere with them whether they belong to the association or not. However, you want that safeguarded.

Mr. FEIBLEMAN. The words "interference, coercion, and financial contribution" are important to us. I mentioned the point about the closed shop where they could be forced to join the association, in the agreement E. M. B. A., but that is a voluntary association purely, and they want to keep it that way.

Mr. BAUM. Would this mean that we would have to have another election?

The CHAIRMAN. No; I think it would probably be better to have another election, but the day after the passage of the bill you could immediately enter into an agreement with the employer for a closed shop, and you can say in that closed-shop agreement nobody will be allowed to be employed unless he belongs to the association.

Mr. FEIBLEMAN. As far as the E. M. B. A. is concerned, it prefers the present voluntary situation that people do not have to belong unless they choose.

Now, as to the court matter here, our plant is located at Indianapolis, and if any matter in that plant came up, it would go to the United States Circuit Court, and that means we have to go to Chicago. Why should you have it in the circuit court rather than the district court? I do not understand that.

Senator WAGNER. That was done so as not to have the delay of going through the lower court, but you go from the circuit court to the Supreme Court.

The CHAIRMAN. The argument made in favor of that was to prevent appeals, and to have a decision directly and hastily made in cases of labor trouble.

Mr. FEIBLEMAN. We think that is a long distance to travel, at a loss to the employees.

In that same section it says that an appeal, unless so ordered, shall not operate as a stay of the Board's order. That is contrary to the rules in appeal and other circumstances.

Senator WAGNER. You have to make final an order preventing the unfair trade practice, and in order that no injury may be done, the court is authorized to grant a temporary injunction.

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Mr. FEIBLEMAN. I was thinking of the analogy where you get a judgment and there is an appeal; a levy does not take place when the appeal is entered.

I have already mentioned the point about the exclusive right of action being in the Board, but it seems to me the employer or the employee should have the right of action, and not depend entirely on the initiative of the Board itself.

Finally, I do not see why you should have to put in a definite recognition of the right to strike. It seems to me in a bill of this kind that is intended to lead the harmoniousness and prevent strikes, it would be much wiser if you would insert in this bill that there shall be no strike until after the matter had been presented to the newly created Board and mediation attempted, instead of asserting what is the legal right known to everybody that any man can strike, and can quit if he wants to. However, here there is direct sanction given to it, so I say why should it not be expressed that there shall not be any strikes until you have presented the matter to the Board and we have tried to mediate and get you together. It seems to me that would be better, and would more tend to lead to harmony and prevent strikes.

The CHAIRMAN. We thank you for your suggestions, and we will give them consideration.

(Information referred to is as follows:)

INDIANAPOLIS, IND., *March 27, 1935.*

DAVID I. WALSH,
Chairman Senate Committee on Education and Labor,
Washington, D. C.

GENTLEMEN: As requested in connection with the hearing had before you on Friday, March 22, on Senator Wagner's bill for National Labor Relations Board, we are handing you herein a copy of the agreement made and entered into between the Employees' Mutual Benefit Association and Real Silk Hosiery Mills, Inc., after the election designating the association as a representative of all of the employees for collective bargaining.

We are also taking the liberty of handing you herewith the written memorandum, which we ask be annexed to and made part of the testimony and statements of the Employees' Mutual Benefit Association of the Real Silk Hosiery Mills in opposition to a number of the provisions of this bill.

The writer's statement of objection, summarizing the situation, was necessarily brief by reason of the fact that the time was divided among three representatives.

All of us appreciate greatly the time allotted to us for the hearing, the consideration shown, and the interest manifested by the committee, and particularly the chairman and secretary.

Trusting that a bill will be agreed upon that will be fair both to industry and labor, and not in the interest of any one organization, but with due consideration to a long-established and successfully functioning association like that of our client, we are,

Yours sincerely,

BAMBERGER & FEIBLEMAN,
Attorneys for Employees' Mutual Benefit Association of Real Silk Hosiery Mills of Indianapolis.

AGREEMENT

This agreement, executed in duplicate by and between Employes' Mutual Benefit Association of Real Silk Hosiery Mills, Inc., of Indianapolis (hereinafter called E. M. B. A.), and Real Silk Hosiery Mills, Inc., with its mills and executive offices at Indianapolis, Ind. (hereinafter called Real Silk), witnesseth:

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That whereas Real Silk has been for a number of years, and now is, engaged in the manufacture of silk hosiery and lingerie, with its principal mills in the city of Indianapolis, Ind.; and

Whereas the E. M. B. A. has been in existence for the past 12 years, its principal duties being to pass upon all matters relating to employment, rates of pay, and working conditions in connection with said Real Silk, and, generally, to look after the welfare of the employes of Real Silk; and

Whereas said parties have cooperated harmoniously during all of the years of existence of said E. M. B. A. without a written contract; and

Whereas on or about the 4th day of October 1933, at an election lawfully held for the purpose by the employes of Real Silk, the E. M. B. A. was chosen to represent such employes in their collective bargaining with Real Silk, in accordance with the provisions of the National Industrial Recovery Act; and

Whereas, in view of the enactment of the National Industrial Recovery Act, provisions of which have been, and are, observed by both of the parties hereto, it is deemed advisable that a written contract be entered into:

Now, therefore, in consideration of the premises, and of the promises, covenants, and agreements, hereinafter contained, it is agreed by and between the parties as follows:

1. Real Silk recognizes, and agrees to continue to recognize, said E. M. B. A. and its duly authorized officers and directors as the organized representatives of its employes, and agrees to deal with said E. M. B. A. and its officers and directors as such organized representatives, who are entitled to represent Real Silk employes in collective bargaining between the parties hereto.

2. Real Silk agrees to name four directors to represent it upon the executive board of said E. M. B. A., and further agrees to abide by all of the rulings and acts of such board.

3. In the event of a tie vote by the executive board of the E. M. B. A., Real Silk agrees that its directors upon such board shall name one member of an arbitration committee as provided by the bylaws of said E. M. B. A., and that Real Silk shall be bound by the decision of the arbitration committee on all matters referred from time to time to such committee.

4. Real Silk agrees that the executive board of directors of said E. M. B. A. shall pass upon all matters relating to working conditions, wage compensations, hours of labor, and other similar matters, and that it will observe and be bound by the decisions of said executive board, and by all rules and orders of the executive board pertaining to employment, lay-offs, discharges, rates of payment, hours of labor, working conditions, and all other matters and grievances, whether or not herein specifically mentioned.

5. Real Silk further agrees to provide funds for the maintenance of the employment office of said E. M. B. A., its management and clerical help, a doctor and a nurse, and to furnish space, light, heat, and equipment and supplies for such activities, without charge to said E. M. B. A. Nothing in this section contained shall be construed as limiting the right of Real Silk to make contributions to group life insurance, and any other contributions, from time to time, as Real Silk as shall see fit to make.

6. The E. M. B. A., on its part, agrees that it will recognize the employee directors elected by its members in conformity with its bylaws; that it will observe the findings, orders, and rules of the executive board; that in the event of a tie in a vote of the executive board, the employee directors shall select one member of an arbitration committee, having no connection either with said E. M. B. A. or with said Real Silk Hosiery Mills, all as provided by the bylaws of the E. M. B. A., that it will fairly, faithfully, and impartially represent the employees of Real Silk in all collective bargaining, and in all other matters of national concern, in full accord with the terms and spirit of its bylaws and with the terms and spirit of the National Industrial Recovery Act, and all rules and orders laid down by the administrators of said act, or by any authorized board or official provided by said National Recovery Act having jurisdiction over matters pertaining to said Real Silk and said E. M. B. A.

7. Both parties hereto specifically and generally agree to observe and obey, both in letter and in spirit, all laws enacted by Congress, and all rules and orders laid down by any board or official appointed or established under such laws, having jurisdiction over the parties to this agreement.

8. This agreement may be modified by consent of both parties hereto, not, however, in any manner that will violate or set at naught the purposes and

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intent of the agreement. It shall not be terminated while the National Recovery Act is in effect, nor thereafter, except by not less than 90 days' notice in writing by each party to the other.

In witness whereof, the parties hereto have executed this agreement as of the 20th day of March 1934.

EMPLOYEES' MUTUAL BENEFIT ASSOCIATION OF
REAL SILK HOSIERY MILLS, INC.,
By CHAS. E. LEEKE, *President.*
WM. HAUGH, *Secretary.*
REAL SILK HOSIERY MILLS, INC.
By G. A. EFROYMSON, *President.*
J. L. MUELLER, *Secretary.*

MEMORANDUM ON BEHALF OF EMPLOYEES MUTUAL BENEFIT ASSOCIATION OF REAL SILK HOSIERY MILLS, OF INDIANAPOLIS, TO BE ATTACHED TO AND MADE PART OF STATEMENTS AND TESTIMONY GIVEN BY WILLIAM BAUM, FORREST BADDERS, AND ISIDORE FEIBLEMAN

Te Employees Mutual Benefit Association of Real Silk Hosiery Mills, Inc., was incorporated in June 1922, as shown by the facsimile of its charter printed in the original constitution and bylaws booklet, copy of which was left with the committee. It functioned as an agency for collective bargaining from its inception and long prior to the depression or any thought of the National Industrial Recovery Act.

Membership in it has always been voluntary, not compulsory, and it is so provided in the bylaws.

In the earlier days the association provided for sick benefits and relief of various kinds. It no longer does this, but the members pay dues of 15 cents per week, which goes toward payment of group insurance, each member receiving $1,000 of group insurance, now written in the Prudential Life Insurance Co., a small portion of the premium being contributed by the mills. The employment is entirely in the hands of the association, and there are various other benefits, such as dental and eye examinations, and also legal advice, but these benefits are granted to all employees alike, whether members of the association or not. Only members of the association, however, are entitled to participate in group insurance and may take out larger policies upon payment of the additional premium.

An election was had in October 1933 to determine as to representatives of the employees for collective bargaining. The ballot contained the names of the Employees Mutual Benefit Association and the American Federation of Full Fashioned Hosiery Workers Union. The vote resulted in 2,016 votes being cast for the Employees Mutual Benefit Association as against 1,054 in favor of the American Federation of Full Fashioned Hosiery Workers Union. Notwithstanding this election, the latter organization refused to deal through the Employees Mutual Benefit Association, insisted on dealing with the mills direct, and upon recognition of its union. Because of this the Hosiery Workers Union called a strike in April 1934; the strike lasted 7 weeks, cost the employees payroll losses of approximately $300,000, and cost the merchants of Indianapolis the benefit of the expenditure and reexpenditure of this money and was a large factor in the mills showing a loss of $350,000 for the year 1934.

The National Labor Board took the matter up after the strike was in progress for the period named, determined that the Employees Mutual Benefit Association was the duly elected representative of all the employees for collective bargaining, and arranged that the strike terminate, all employees to be restored to work excepting those who were guilty of violence.

Men employed in the mills averaged wages of from $30 to $50 a week, and women employed at the mills averaged from $20 to $30 per week. The entire force, although at somewhat shorter hours and at reduced pay, were kept employed during the entire period of the depression. The strike occurred at a time when literally hundreds of unemployed people of Indianapolis were walking the streets looking for work.

We are not taking the position that there should be no new law enacted. We are of the opinion, however, judging from our own experiences of equal representation of management and employees, with only one arbitration as

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provided for by our bylaws, in a period of 13 years, that neutrality is important. We believe that on any new board created there should be representation of industry and of labor in equal numbers, and with a neutral chairman.

We do regard the bill, as submitted, requiring amendment in a number of particulars. We have suggested the following points for your consideration:

1. The definition of "employee" in section 2 (3) should be so drawn as to exclude those guilty of acts of violence, as we are of the opinion by such acts they should lose their right to be considered employees.

2. We regard the definition of "labor dispute" in section 2 (9) as too broad in its inclusion of disputants, regardless of whether they stand in the relation of employer or employee. We have found in our experience that the most difficulty has come from nonemployees asserting the right to bring about a dispute between employer and employees.

3. Section 5 provides for prior inquires by members and agents of the board without disqualification from participation in subsequent hearings.

4. In section 10, clause (c) there is further provision that the board, when it has reason to believe that any person is engaged in unfair labor practice, shall itself file a complaint on its own motion. It is our opinion that these two clauses put the board in the position of being prosecutor, grand jury, and court, a situation that does not work for impartiality.

5. Section 8 defines "unfair labor practice" for an employer, but does not include any provision respecting unfair labor practice on the part of employees or others. It is proverbially a poor rule that does not work both ways, and we are of the opinion that there should be no coercion, interference, or restraint on the part of employees or representatives of organizations.

Clause 2 of this section forbids the employer to interfere with the administration of any labor organization, or contribute to financial or other support. For almost 13 years the employer has named employees as four of the members of our executive board, and there has been the harmonious relation hereinbefore mentioned, and yet we can readily see how a national board might determine that the naming of four members of the executive board of our employees by the mills was an interference which would do away with the whole plan and structure of our association, which has functioned so effectively for so long a period.

Furthermore, the mills contribute a small portion of the payment of premium due on group insurance on the lives of the members of our association, and this might be construed to be financial support. (See clause 5 of the contract.)

6. Section 8, clause 3, provides that there may be an agreement with a labor organization to require as condition of employment membership therein. Membership has always been voluntary in our association, and we have not sought to have agreement for a closed shop, which would prevent others than those belonging to the Employees Mutual Benefit Association to be employed at the mills. We favor freedom of contract, and the American right of individuals to belong or not to belong to an organization, and should prefer there be no such clause in the law. However, we realize if it is left in that it may be necessary for the good of our organization to request such a contract.

7. We are most strongly opposed to section 9 (b), which provides that the National Board shall decide whether the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit. We have in the mills some 20 to 25 possible units, and to permit each one to have its own representatives for collective bargaining would be most detrimental to the requisite harmony for the good of employer and employees. It seems to us in the interest of genuine democracy and recognition of majority rule, that the employees themselves shall determine whether the election should be by separate units or for the entire plant. One particular unit having the right to bargain separately might be a basic one, interfering with the entire operation of the plant, with the result that 300 employees, for example, might interfere with the welfare and continued employment of 3,000. The least interference of Government in industry in this particular is, from our viewpoint, most desirable, and we are considering it from the standpoint of the employees.

8. Section 10 has already been referred to with respect to the board, under paragraph (c), having the power to initiate complaints on its own motion Not only is this section objectionable from that standpoint, as heretofore set out, but it sanctions having outsiders appear as witnesses, and provides that the rules of evidence prevailing in courts of law or equity shall not con-

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trol, which would permit the admission of hearsay evidence, gossip, and whatnot. There certainly can be no valid reason why such hearings, if held, should be upon complaint of interested parties, and should have applicable to them the usual rules of evidence.

9. Paragraph (f) of section 10 provides that in case orders are not obeyed, the board may petition the Circuit Court of the United States. Here in Indianapolis that would mean hearings would be held at Chicago, with consequent expense and inconvenience to employees who might find it necessary to be in attendance as complainants or witnesses at such a hearing. We can see no valid reason why the United States District Court, sitting here, could not have such jurisdiction conferred on it.

10. Section 11 of the bill provides that proceedings in equity which prevent and restrain unfair labor practice, shall be solely at the request of the national board. It would appear to us that the Employees Mutual Benefit Association, or any other representative of the employees for collective bargaining, should have the right to seek such relief direct, without the necessity of obtaining the sanction and the action of such board. Otherwise, a day in court might be denied aggrieved parties.

11. Finally, we take most serious exception to section 15, which provides "nothing in this act shall be construed so as to interfere with, or impede or diminish in any way, the right to strike."

It is generally conceded that such legal right exists. It does not need such recognition by the law and, for our part, we deplore seeing such implied sanction of strikes. Our own experience of last spring's strike is still fresh in our memories, and, instead of encouraging strikes, as might readily be the interpretation of this section, this law should distinctly discourage them in the interest of "the free flow of commerce" and "the general welfare" desired and expressed in the declaration of policy of the act in section 1.

In our opinion, a strike should be the last resort, not the first, with its consequent unemployment, losses to employees, employer, merchants, and community. A wiser provision, in our judgment, would be that there should be no right on the part of employees to strike, or on the part of employers to "lock out", in wholesale fashion, without justifiable cause, until after the proposed board had used its good office and exhausted every effort to bring about a mediation and reconciliation of the parties. As we view it—and again we are talking as employees—we realize that unless the employer can live and prosper he cannot hire and pay employees; that any National Recovery Act should not be for the aggrandizement either of labor or capital, industry or employees, but should be fair and impartial to both.

There has been a mutual working together of representatives of the Real Silk Hosiery Mills and of the employees through our association, as exemplified in almost 13 years of successful functioning. So-called "company unions" of the type like ours should not be restricted, restrained, or forbidden. They make for harmony between employer and employee. They create proper working conditions, satisfactory salaries, and harmonious and contented employer and employees. That, in our opinion, is what is needed generally to usher in the much-desired new era of prosperity.

Respectfully submitted.

EMPLOYEES' MUTUAL BENEFIT ASSOCIATION
OF REAL SILK HOSIERY MILLS, INC.,
By BAMBERGER & FEIBLEMAN, *Attorneys.*

MARCH 27, 1935.

Mr. Mowitz, if you will come forward, we will be glad to hear from you.

STATEMENT OF ARNO P. MOWITZ, OF PHILADELPHIA, PA., REPRESENTING THE FULL FASHIONED HOSIERY ASSOCIATION

The CHAIRMAN. Will you state your full name?
Mr. MOWITZ. My full name is Arno P. Mowitz.
The CHAIRMAN. And you reside at Philadelphia, Pa.?
Mr. MOWITZ. Yes, sir.
The CHAIRMAN. Will you state in whose behalf you appear?

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Mr. MOWITZ. I appear in behalf of the Full Fashioned Hosiery Association, of the Eastern Full Fashioned Hosiery Mills, 100 in number, employing about 30,000 men and women.

The CHAIRMAN. What is your business?

Mr. MOWITZ. I am a lawyer.

The CHAIRMAN. You may proceed, Mr. Mowitz.

Mr. MOWITZ. I want to say, Mr. Chairman and gentlemen of the committee, that this organization of these hosiery mills was formed for the sole purpose of standardizing wages and working conditions. This organization insists upon its members paying at least a minimum wage which we have established, and we have succeeded to the point where that standard is not only accepted universally by employers alike today, but is cited as the standard in the union contract.

Senator WAGNER. Are those companies unionized?

Mr. MOWITZ. We are open shop, but we leave it up to the employers to do what they want to.

Senator WAGNER. Have you a collective bargaining agreement?

Mr. MOWITZ. We leave that entirely to them. This association does not dictate that policy.

Senator WAGNER. The reason I asked was because one of your associations made a collective bargaining agreement with its workers, and did it in the presence of the National Labor Board; but, I believe, that was another association.

Mr. MOWITZ. That was another association, Senator Wagner. Mr. Haynes was leading that group and it has a closed shop union agreement.

Senator WAGNER. It comprises a great many workers.

Mr. MOWITZ. About 3,000 to 10,000 are employed, I think. We employ about 30,000, and we have about 70 percent of the production capacity of the United States.

You have heard, and you will hear arguments from the large dealer association, which I do not pretend to be, on the legal phases of this bill, but I want to carry my part of the standard, because I am a practical executive myself, and not merely a lawyer.

I look at it very largely from the standpoint of the employees, because I have handled a great many labor disputes, and the first requirement I have is to know what the man is paying, because if he is paying fair wages he has a case, and if he is not paying fair wages, he has not a fair case.

Therefore, I am going to confine myself to two things only from a practical standpoint, and that is, this bill as previously proposed and to a very large extent as now proposed has engendered a great deal of suspicion from the employers of labor, not alone from what the wording of the bill may protend but because of their experience in dealing with labor, particularly organized labor, in the effort to organize their mills on a union basis.

We hold no grief for an employer who forces representation on the part of his employees, and if that representation is obtained under fair means no fair employer should object to it.

We believe that the provisions of this bill undoubtedly favor the kind of activities which we think will not be fair. We find that while you have eliminated the word "influence" from last year's

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bill, you nevertheless have significant wording here which leads us to go back to the old principle, and that is this: You say we may not dominate and interfere and those are terms which need and require definition.

The personnel of your labor board or arbitration board, whichever it is will determine that, and we are sailing into the winds. We believe those terms could be qualified, and thereby gain the confidence and support of the people with whom you tried to make the few arrangements, where we are now strengthened in our apprehension by the present wording of section 2, which merely makes an exception to the effect that the employer can be prohibited from not permitting his employees to confer with him without loss of time or pay.

We do not know what that means except to limit against the employment of definitions of the words "dominate or interfere."

The CHAIRMAN. The purpose is to limit those words as you have stated.

Mr. MOWITZ. We come then to this, that our main objection to the practical phase of this bill is that you tie the employers' hands in an attempt to arrive at amicable relation and working terms with his employees.

The CHAIRMAN. I do not think there is anything in this bill to prevent an employer when his employees, the men and women are about to organize from posting a notice, or writing each an individual letter, or personally stating to each that he thinks their best interest is to form a company union, that is violently opposed to so-and-so who is attempting to organize a union. I do not understand there is anything in the bill to prevent an employer from doing that, and that is why we struck out the word "influence." That would be influence, and not interference.

Senator WAGNER. I think you are getting frightened with words.

Mr. MOWITZ. No; rather I am speaking out of a good many years of experience.

Senator WAGNER. Is there not a difference between conference and interference in the administration of a union?

Mr. MOWITZ. There might be, but I call your attention to this, and you come to subsection 3 of section 7, and you have this language that nothing in this act shall preclude an employer from making an agreement with a labor organization for a closed shop, union or nonunion, with a labor organization representing the majority of his employees, providing that organization was not formed as the result of a violation of any of the foregoing provisions.

There, you are putting the employer in a position he does not know whether a minority group among his employees happen to belong to another labor union, and may come in and claim that this is a violation of the company organization, contrary to these provisions. Do not forget, gentlemen, that your Labor Board may take testimony, and that your appeal is not to a Federal court of the first instance, but that your appeal is to the circuit court of appeals, and that the finding of facts of the Board, which may be based upon hearsay evidence, is conclusive.

Senator WAGNER. That is the rule of the Federal Trade Commission and of other boards that function quasi-judicially.

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Mr. MOWITZ. But it could be.

Senator WAGNER. No; it could not.

Mr. MOWITZ. Then, why put it in, if it could not be?

Senator WAGNER. You would not want to have a board of this character, without power to investigate. If it was new, we would not put it in probably; but as I have said, all of these quasi-judicial boards have that power, and it is not new; and why should this board be dealt with differently?

Mr. MOWITZ. Because it belongs to a condition different from those others you mentioned, and different rules apply. You have provided for a condition that is entirely one-sided, if your bill should become a law; and it would not be satisfactory to the situation we have in our industry, and in many others that when our people do not want to join the union they find milk bottles with acid in them, and things like that, thrown in their homes. Would you say that is obtaining membership by coercion?

Senator WAGNER. You know there are policemen to stop that sort of thing?

Mr. MOWITZ. Yes; I know that; and we have spent almost a fortune to find out who did it, but we have not found out.

Now, I do not object to organized labor; I think organized labor has its proper place; and if it employs proper means, no one can object. They are in business just as the manufacturers are in business; their executives are paid as the executives of a factory are paid. They have a job to perform, and if they perform, and if they perform it under the same circumstances we have to perform ours, and show the goods they have to sell are the right goods, and they can convince the workers that is what they need, they are perfectly entitled to have the benefit of their labors.

I have no objection to that.

Senator WAGNER. You believe that the workers ought to be free to join or not join just as they see fit—free from any interference in any way by the employer?

Mr. MOWITZ. Yes; I agree to that.

Senator WAGNER. An employee does not interfere with the employer when he organizes a trade association; the employee does not attempt to interfere with that organization; and as I pointed out today, these trade associations may agree upon their code, and they adopt a rule that the minority is bound by the rule of the majority.

There is no interference by the employee, and that right is protected by law, and we say that the law should be also to allow the employee to organize by himself without interference from the employer.

If there is any violence or anything of that kind exercised, there is a remedy in law today, but we want to keep them free in that right from the economic pressure and influence which undoubtedly the employer has exercised to control his job.

That is why those two matters ought to be dealt with separately.

Mr. MOWITZ. Yes; but I don't follow you to this point that the employee should be free; there is no doubt about it; but when you have an outside organization who are in business, coming in, not only attempting to intimidate the employee that is concerned in this

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question but the employer as well—and there is no doubt they have succeeded, through those methods I have referred to, in coercing our employees into their organizations—and then for them to sit around a table and ask that we should treat with them in good faith, we do not think that method should have any protection at all.

Senator WAGNER. You have your remedy, or your employee has a remedy, if there is intimidation, and he is forced to join a union. However, if the employer forces upon the employee a company-dominated union, the employee has no remedy to go in court and complain, and there is not anything for him to do but lose his job.

Mr. MOWITZ. Yes; I can understand where some employer would do that.

Senator WAGNER. You know, in these cases the great majority of our employers want to be absolutely fair with their workers; and there are many company unions that are not dominated at all, and are very fine institutions; but this has to deal with the employer who attempts to interfere with his employees and not permit them to organize freely. You are the first one who has addresed yourself in this manner to these provisions of the bill, and I think you are apprehensive about it.

Mr. MOWITZ. No; I speak from actual experience.

Senator WAGNER. Of course, if there is a threat of violence, or actual violence is committed, you shall still have the right of injunction in the Federal court, notwithstanding the passage of this bill.

Mr. MOWITZ. Not in a great many States, because we haven't that in Pennsylvania, for instance.

Senator WAGNER. Yes; I think you have.

Mr. MOWITZ. I know, but try to get a commitment for contempt.

Senator WAGNER. The right exists, if you will go into court, so why put it in again, when this bill is dealing with the relationship of employer and employee?

Mr. MOWITZ. If you will place us on the same basis as the labor union—and when I speak about labor union, I am talking about organized labor; if you will place us on an equal basis and let us compete with it, then it would be quite a different matter; and if we cannot offer the workmen something better than they can get from the organized labor, then we cannot complain.

The CHAIRMAN. Mr. Mowitz, if you have anything further, we would be glad to have you submit written briefs.

Senator Donahey has presented to the committee a petition which he received from the president of the Buckeye Lodge of the Amalgamated Association of Iron, Steel, and Tin Workers of North America, which petition is signed by 20,000 steel workers, favoring this bill.

The letter submitting this petition to Senator Donahey is as follows:

WASHINGTON, D. C., *March 20, 1935.*

MY DEAR SENATOR DONAHEY: This letter will introduce one of your constituents, Mr. Edward E. S. Kephart, of Niles, Ohio, who is president of the Buckeye Lodge of the Amalgamated Association of Iron, Steel, and Tin Workers of North America in McDonald, Ohio, and who came to Washington yesterday by prearrangement to testify before the Senate Committee on Education and Labor in favor of the Wagner National Labor Relations Act. He brought

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with him petitions addressed to Congress asking the enactment of this bill, signed by 20,000 steel workers, which he desires to present to you.

Faithfully yours,

CHARLTON OGBURN,
Counsel, American Federation of Labor.

The CHAIRMAN. The hearing will be adjourned now until 10:30 o'clock Monday.

(Thereupon the hearing in the above-entitled matter was adjourned at 1:20 p. m. until 10:30 a. m., Monday, Mar. 25, 1935.)

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NATIONAL LABOR RELATIONS BOARD

MONDAY, MARCH 25, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met at 10:30 a. m., in room 318, Senate Office Building, Washington, D. C.

Present: Senators Walsh (chairman), Murray, and Donahey.

The CHAIRMAN. The committee will please come to order.

Mr. Merritt, will you take the witness stand?

STATEMENT OF WALTER GORDON MERRITT, REPRESENTING THE LEAGUE FOR INDUSTRIAL RIGHTS, NEW YORK, N. Y.

The CHAIRMAN. What is your full name?

Mr. MERRITT. Walter Gordon Merritt.

The CHAIRMAN. Where do you reside?

Mr. MERRITT. New York City.

The CHAIRMAN. And your profession?

Mr. MERRITT. Lawyer.

The CHAIRMAN. Are you appearing in your individual capacity or as a representative of some organization?

Mr. MERRITT. I will appear for the League for Industrial Rights, and in my individual capacity as a practicing lawyer interested in the matter for a great many years.

The CHAIRMAN. Tell us something about the League for Industrial Rights.

Mr. MERRITT. The League for Industrial Rights is an employers' association, representing employers.

The CHAIRMAN. National or local?

Mr. MERRITT. National.

The CHAIRMAN. National. How many members has it?

Mr. MERRITT. About 1,000.

The CHAIRMAN. About 1,000 members of any particular industry, or of all classes of employers?

Mr. MERRITT. All classes.

The CHAIRMAN. I understand, Mr. Merritt, that you have had particularly wide experience in what may be called industrial cases in your cases in the courts relating to differences between labor and industry. Am I correct in that information?

Mr. MERRITT. That is correct.

The CHAIRMAN. And how many years have you been making a special study of this class of legal practice?

Mr. MERRITT. Over 30 years.

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The CHAIRMAN. And you have appeared as counsel in a great many of these cases?

Mr. MERRITT. In a great many, and a great many of the leading cases.

The CHAIRMAN. And usually representing the employers, I suppose?

Mr. MERRITT. That is correct.

The CHAIRMAN. We will be very pleased to have you proceed in your own way to present such views as you think would be helpful to the committee.

Mr. MERRITT. At the outset, because of the fact that I do represent employers, and have acted for them in many cases against organized labor, I would like to make it clear to the committee my general position in that concerning matters of this character.

I am not out of sympathy with the purpose of this bill to promote equality of bargaining power between employers and employees, and to diminish the causes of labor disputes; I am not out of sympathy with the parts of the declaration of policy which are along the same line, nor am I out of sympathy with section 7, which defines the rights of employees.

The CHAIRMAN. Employees?

Mr. MURRAY. Employees.

The CHAIRMAN. Yes.

Mr. MERRITT. It has always been my contention that organized labor is an institution of great usefulness to this country, and that it has accomplished a great deal for the good of the country. I will go so far as to state that were it not for organizations, actual and potential, both union and nonunion, employers would not treat their employees with the same consideration and would not be today concentrating so much upon the problems of the betterment of the conditions of the employees.

As to the whole conception of antiunion oppressive policies I would like to say that in spite of my position I have been publicly on record in editorials written—one I have in mind in 1920—as opposed to this repression of the natural right and natural freedom of employees to organize. As to the expediency of a measure of this kind to promote such a policy centralizing in a national board in Washington, with arms that can reach out to the remotest parts of the country, thus attempting to by legal compulsion promote this idea of collective bargaining and minimize labor disputes, I myself have grave doubts. It is not a practicable approach from my point of view, because I believe better methods were being worked out by more intimate contacts between employers and employees. The human relationship factor is the all-important factor, and not the factor of strategy, law, and boards.

The CHAIRMAN. Repeat that, please.

Mr. MERRITT. I believe that better results were being worked out by more intimate relations between smaller groups of employers and employees than can be worked out through any widespread national control. On the other hand, those are questions which are arguable. I feel that I may be wrong in my approach, but there are certain phases in this bill on which my convictions are very strong that the bill is absolutely unsound and unjustifiable by virtue of its partisanship and its lack of constructive policy. These are matters which, to

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my mind, are matters of right and wrong in the simplest terms of those words.

The bill, we will have to concede, must be described by its proponents as a drastic, radical reform. It is aimed to compel compulsory dealings between employers and labor unions where a majority of their employees so desire it. It seeks to force those compulsory dealings by drastic legal processes. The employer must bargain collectively with such an agency regardless of whether it is a good agency or bad agency, and cannot separate himself from the employees who select that agency, no matter how socially unsound that agency may be, or how devoted it may be to wrongdoing and unsound social qualities. An employer must not restrain, interfere, or coerce employees in such matters.

Moreover, the essence of this compulsion, which is found in section 8 of subdivision 3, forbids the employer by discrimination in regard to hire or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

Moreover, the bill goes further and says that if a majority of the employees belong to a union and the employer being forced by economic conditions is required so to do, he may enter into a closed-shop agreement requiring as a condition of employment that the balance of the employees join the labor union.

And then in section 9 as adding to the further completion of this picture of compulsory bargaining with the bad agency we have the so-called "majority rule", whereby the employer on the vote of a majority of his employees must deal solely with the agency of the majority notwithstanding the fact that the minority, though it may be as much as 49 percent, have no voice whatsoever in the majority agency. So it is not unfair from my point of view to state that this is a measure which provides for compulsory dealings with a selected organization regardless of what that organization may be. And it is a compulsion which runs on one side only. The union may at any time refuse to deal with the employer. Unions have often refused. It is an option on the part of the unions to deal with the particular employer in any case where the majority of the employees so require it. It seems to me that if we are going to embark into any national attempt to reconstruct labor relations on any such broad basis as this that we should pursue a sound legislative policy regulating the organizations with which we have to deal which, by virtue of this act, we might say become impressed with the public interest. Perhaps there is no other point in this bill that is as important to me as that. It is the fact that these organizations have been largely relieved from legal restraint by various enactments of Congress and State legislatures so that there is not the same restraint on their wrongdoing that there once was.

Now, this bill comes forward and goes a step further and supplements the policy of relieving these organizations from legal restraint by saying that now you have relieved them from legal restraint you must deal with these unrestrained, unsupervised, unregulated private societies which have complete control over their own membership as much as any private society, and which are not subjected to any attempt to correct their well-known abuses.

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I cannot believe, Mr. Chairman, that any bill of this character, which does not attempt to curb the wrongdoings and in the long run promote collective bargaining, I cannot believe that organizations unrestrained in their wrongdoings, and with no curb on their bad practices can do as well in promoting sound collective bargaining as organizations which are subject to reasonable restraint and supervision in return for the privileges which it is supposed to extend to them. Neither can I believe, taking the other statement or purpose of the act, that any such lopsided approach to the situation, which seeks to impose great privileges on organizations which like all other human institutions, engage in wrongdoings, all these great privileges, and does not in any way seek to regulate them, or supervise them for the benefit not only of the members but for the public and of the employers with whom they have to deal.

The CHAIRMAN. Would not that be a difficult thing to work out in a legislative bill?

Mr. MERRITT. I think it would be a very simple thing to work out. I think if this bill were amended in effect stating that a labor organization as defined in section 7 or 8 is a labor organization which shall conform to certain standards of decency and fairness and democracy in the administration of its affairs, that that would be one method of approach.

The CHAIRMAN. Would it not be difficult to define "decency" and "democracy"?

Mr. MERRITT. I do not think so. I can state my standards right here as illustrative of what could be worked out. I do not understand that the problem has even been approached.

The CHAIRMAN. May I suggest that you draft an amendment of that kind?

Mr. MERRITT. I would be glad to.

Another suggestion to accomplish the same end would be a statement to the effect that it would not be a violation of the act for any employer to refuse to deal with a union for just cause, and then define the just causes. And those just causes would go to the very inherent nature of the organization itself.

If something of that kind could be done, so that these tremendous institutions, which are so capable of good or ill in their societies could be brought up to the ordinary standards of morality in business and commercial life the bill would be in my opinion enormously improved.

It is an extraordinary fact in a development of this subject that down to a comparatively few years ago the employer was the one who was the primary relying on the law for the protection of his rights against the overt acts of labor organizations. He was the one who was coming into court and enjoining their combinations in restraint of trade, their violence, their intimidation, and their other wrongful conduct. He did that for a long period of time. And finally Congress by the Norris-LaGuardia Act discouraged any attempt at legal correction in that way, and discouraged it to such an extent that as to large and important classes of things designed to protect the public against oppression and privation the discouragement is almost equivalent to prohibition.

Now, we are approaching the problem in the opposite way. We are not only making it difficult for the employer to correct the labor

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union in its wrongdoing, by any appeal to the court, but we are inviting the unions to come into court for the protection of their rights, and thus the union is to become the legal aggressor under this act for the protection of its right as against the employer who used to take the initiative in the courts for the protection of his rights. We have completely reversed the policy, and in reversing it suddenly giving such a more powerful position to these organizations by virtue of the fact they are not legally restrained and by virtue of the fact that they have to be dealt with, no matter what they do, we have put them in a position which is quite different, and one which falls for radical changes in policy, and for some restraint and supervision of the unions themselves.

I feel that now the time has come to codify certain sound principles relative to industrial disputes and relative to the administration of the affairs of these private societies as against a condition of their having the privileges of this act.

I may make the mistake, Senator, of repeating myself, but you will, of course, remember that you are the only member of the committee present, and I would like to complete my statement on this point.

The CHAIRMAN. Of course all of your statement will be printed and be available to all of the members of the committee.

Mr. MERRITT. Yes.

The CHAIRMAN. And to the members of the Senate also. But your presentation is perfectly proper.

Mr. MERRITT. If we are going to have a governmental overlord over these situations, why should not that overlordship extend as far as practicable to a correction of all of the major abuses which have been the abuses which habilitated against collective bargaining?

Mr. Emery was reminding me of the fact that I well knew, that two of the greatest employers' associations in this country, which have become two of the severest critics of the unions, were simply associations which were organized in the first instance to deal with labor unions. They tried it. And the history of that trial is not creditable to the labor organizations. And it resulted finally because of the unfortunate experience in their taking an absolutely opposite attitude.

If matters such as I have in mind had been written into law in some way as a restraint on the conduct of labor unions, those organizations today might be still and might have been uninterruptingly collective-bargaining organizations thoroughly believing in the good of labor unions.

I do not know that it is necessary to maintain my factual background that labor unions sometimes do wrong. Anyone experienced with human affairs knows that that must be so. We know that no organization, to use a mixed metaphor, will ever reach up its hand and take down and put on its own bridle. There had to be restraint. Hitherto I had thought that restraint would arise to a large extent from the competitive position of organization. We needed strong labor unions to keep the employers on their tiptoes, but we needed strong other kind of organizations to keep the labor unions on their tiptoes. And these should be struggling for a social sanction and trying to render a service which would be in the public interest.

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If, however, we are trying to promote a more monopolistic state of one type of organization, we are setting up a situation where there is more likelihood of abuses because of the lack of one of those restraints as applied to labor organizations.

Lest I be looked upon as the severe critic of labor unions because of my long-standing affiliations with employers, I want to quote a paragraph from an article in the Atlantic Monthly for December 1934, written by Mr. Newton Baker. It reads:

> The cloak of respectability and partial immunity from police control soon extended over a much wider field of operations, and gunmen, educated to protect rum running, extended their rackets into labor controversies, so that the free bargaining between employer and employee, sought to be assured by recent Federal legislation, has with increasing frequency become a conflict between the employer, denied police protection, and the employee represented, whether he wants to be or not, by determined men who have taken force into their own hands, violently destroying property and intimidating employer and employee alike as they cruise around from one place to another calling themselves the shock troops in the labor war.

I also want to quote from Mr. Justice Brandeis, giving a unanimous opinion of the Supreme Court of the United States in the case of *Dorchy* v. *Kansas*. It reads:

> The right to carry on business—be it called liberty or property—has value. To interfere with the right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted.

My purpose in making these quotations is to bring this committee right back to a position comparable to that taken by President Roosevelt along about 1905, when he was engaged in his crusade against trusts. He drew the distinction, which the public understood, between good trusts and bad trusts, and insisted that the legislation must be against the bad trusts.

I want to see the distinction drawn between good strikes and bad strikes. And when I say that I do not mean the question of the degree of wages, which, of course, is a standard that is impossible to lay down, and between good unions and what I may say, to borrow the vernacular of the labor unions themselves, the yellow-dog unions, of which there are some, and of which there cannot be any question there are some, and which Mr. Baker's own statement convinces me that there are some.

If we can set up this codification which will show the difference between encouragement of bargaining and strikes for industrial justice, and the discouragement of wrongdoing, the use of strife for industrial injustice and social wrong, then we will have made a very constructive contribution to this whole subject. But to take under your supervision this question of the enforced dealings between employers and labor unions in the face of the known fact that there is such a large amount of wrongdoing internally and externally in labor organizations and their administration without in any way seeking to correct the evils or state the conditions under which unions shall get this privilege is, to my mind, unsound legislative policy, and it comes down, as I think I will show you by one or two illustrations, to two very elementary questions of right and wrong.

The employer should have the right of selection and discrimination in the public interest, in the interest of the workers, and in the

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interest of self-defense under certain circumstances, which I believe it is perfectly possible to define.

And let me say this to you, Senator, in considering the constitutionality of a measure of this kind. If you say to me: "I have had an agreement with a labor union. It flouted it today. It is in the hands of radicals, and they will flout every agreement when it comes down to flout it, and that it proposes to enter into agreements and then strike when the merchandise is on the machines." And the Board under the mandatory provisions of this act says, "I cannot discriminate against any labor union or any members of any labor union", then I say to you any attempt to impose such compulsion upon you is clearly unconstitutional. And I as a lawyer would advise my clients as a matter of law, whatever might be the wisdom of the policy, under the circumstances that I would refuse to deal with that labor union, and thus open myself by an act of self-destruction to its repeated wrongdoings. And I would let the matter go into the courts and let a question of constitutional law be raised, and it would be raised under circumstances which would have every possible human appeal in it.

We have had some very interesting situations in New York this winter which bear upon this point.

I had been counsel for the realty advisory board on labor relations, which for a period of months had been handling the actual and threatened elevator strikes. You will not recall the details, but on November 21, 1934, as the result of threatened strikes a contract was entered into with the Building Service Union. It was entered into at the behest of the mayor of the city, and the borough president of Brooklyn, Raymond V. Ingersoll, the Regional Labor Board, and others.

It contained various provisions, and among those provisions was one providing for arbitration of the standards of wages and hours. That arbitration proceeded deliberately to consider the questions and gave full time to everybody concerned. The union appointed as its arbitrator the president of the union, and we of the realty board appointed a man whom we thought capable of representing our interests, and Maj. Henry H. Curran was appointed the chairman.

After about 2 months of deliberations an award was rendered.

Just prior to that award the union president stated there were one or two things upon which he disagreed, but with most he said he was then in entire accord. But he said, "Whether I sign it or not the union will abide by it."

The award was rendered. And he went to his union meeting and the union declared it would not stand by the award and was going to declare a strike. And strikes began to take place. The union president himself, who had sat on that board, did not sign the award, stating that he was prepared to lead the forces into a fight for a new and better and different agreement, in utter disregard of this award.

We were down in the mayor's office until 4 o'clock one morning trying to adjust that matter with the help of some very able, and the successful help, representatives of the American Federation of Labor, and with various city officials all sitting in on this situation.

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And an adjustment was reached after strikes had taken place which did settle the strike. We had in the course of 2 weeks there three sets of organized strikes in violation of agreements by that particular union.

Now, suppose we had elected not to bargain collectively with that union again. Suppose we had elected not to enter into further arbitration with it. You and I know that that would have been a very natural, human, and just thing to do under all circumstances if my statement of the facts is correct. You and I know in the ordinary affairs as between man and man there are incentives for good conduct and penalties for bad conduct and of the laws and reward and punishment for their application.

I say this law applies in the teeth of all of that and gives the same right to an organization which violates its agreement to insist upon a state of compulsory wedlock with the employers as it does to the legitimate and lawful organization, and in that respect this law is wrong. And it is that respect more than any that I get back home in my town the opposition and criticism of this law.

Let me take another situation which again grows out of the experience of one single man like myself in the course of this last winter. We had a situation on the water front in New York where the teamsters' unions and the longshoremen's union entered into a combination that no freight should be handled by steamship common carriers if it were so-called " nonunion freight."

The program as laid out was ultimately to control the conditions of production in every factory by not allowing common-carrier service to be extended to nonunion freight. It was stated to the leading civic organizations in the city, when they were trying to adjust this matter, that for the moment this extended only to these particular deep-sea steamship lines on the water front, but that they were already progressing in the matter so it would extend to all railroad terminals and to other points on the Atlantic seaboard. So we have the situation developing that the common-carrier obligation of serving the public without discrimination was to be completely broken down and the union by the exercise of its board, because it was in a strong strategic position, to determine what products should be transported by commerce and what products should not. And that determination was to depend upon whether or not the products had at some time become commercial leopards by reason of the fact that they had touched the hand of a nonunion man, a sore spectacle as to those who believe in the right of the employees to determine their own self-organization.

We sought an injunction in that case naming as defendants some 50 labor unions and some 50 steamship companies, because they were acquiescing in this process rather than undergo the strikes. Some strikes were called against steamship companies who had tried to exist, and those strikes were in violation of collective agreements which had arbitration clauses for all disputes in them. So you had this union policy, not an adventitious situation, but a fundamental union policy in violation of collective-bargaining agreement to prevent these shippers from enjoying the public rights, from having their products serviced by public carriers. In principle it was exactly the same situation as if the employees of the Pennsylvania Railroad

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Co. had refused to move the midnight train last night because I was coming down here.

The court held that these steamship companies, because they did not discharge the men who refused to perform the duties of handling and checking this freight, were themselves coconspirators and liable criminally and civilly as members of a combination to deprive us of our rights.

This act would compel those employers to continue to be criminals. It would compel them to go on and deal with this organization, which was pledged to this antisocial, illegal, and criminal policy. If they went out on strike it would compel them to take them back, because you could not separate the discrimination against them for this policy from their discrimination against them as union men. It was a settled union policy.

By that illustration I want to bear home to you the necessity of writing in this bill a standard of what is a proper labor organization and what is not a proper labor organization, or a standard, if you will, of what should be a just cause for an employer to refuse to have dealings with a particular labor union.

We have had situations in New York, with which probably you are familiar, whereby we have built Chinese walls around New York to prevent products from coming in there from outside States.

In the particular instances that I have in mind, which I am perfectly prepared to specify if it is desirable, the products excluded were not simply nonunion products, but products union or nonunion, which came from outside the State, because the purpose was to secure an exclusive market for the local manufacturers, and those who employed members of the local union as distinguished from members of some other affiliated local in another State.

In order to carry out that policy the union in New Haven, for instance, calls a strike of employees in a particular factory who are producing for the New York market. They say, "We are going to stop the spring which supplies the stream of interstate commerce from New Haven to New York, cutting it off at source. We won't allow stuff to be produced for the New York market. If you produce it for another market, very well, but we are trying to aid those fellows in maintaining that Chinese wall around New York."

Then on top of that where one or two products get through strikes of all trades are called on buildings, because these products are being used in connection with that particular building. Those are not combinations solely between employers and employees of the conflicts, but employers and employees who are to some extent conflicts between harmonious organization of employer and employee in one section and a harmonious organization of employers and employees in another section, each desiring competitively, as is their right, to enjoy the New York market.

So there you had strikes against the production for the New York market and you had strikes to prevent the sale or installation of those products in the New York market at the point of distribution. What are you going to do with a situation like that under this bill?

Have I, as the Dextone Co. of New Haven, which is a producer organization, seeking to have its market used in New York City, got

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to resume relations with these same union men the day after they have refused to produce products for the New York market? Maybe you will say to me—I do not know what Senator Wagner would say—that discrimination against the union on that ground is not discrimination against the union. But I do not think he would say so. I do not think any of the proponents of this bill would say so, because the bill itself says "any labor union."

I take it, so far as the wording of the bill goes, that I have to carry on relations, and the majority of my employees want it, with a communistic organization pledged to my destruction. Absurd, you may say, by virtue of the extremity of the illustration which I give, but extreme illustrations are useful in developing an idea, and it is my purpose here in this branch of my argument to develop the idea that it is absolutely an unsound legislative policy and an unsound social policy to say that you will have to do business with these organizations, regardless of their wrongdoings, regardless of the fact that they are absconding with the moneys of members, not accounting for them, regardless of the fact that they are devoted to illegal practices, and that the time has come, if you are offering these privileges to these organizations, to impose some hostages for good behavior, and to set up some reasonable standards—I do not ask for restrictive ones—as to what is a legitimate organization that can enjoy the benefits of this act, or what is the basis of a just cause on which an employer can refuse to deal with these organizations?

Let me now pass on to the question of majority rule. I am entirely out of sympathy with it. I would suppose every liberal was out of sympathy with it. I have talked with men in New York who have held other social philosophies from what I have held, who I regarded as almost radical in their liberalism, and they look upon this majority rule as a rule of repression. I am referring, of course, to the rule set forth in section 9 that a majority of the employees may determine what shall be the collective bargaining agency for all of the employees.

You have undoubtedly had this called to your attention by other people, so I will not go into it at great length. You know it is absolutely at variance with the President's policy set up in March 1934, in the automobile industry, and you know with what glow of elation, if one may judge my words, the President described that policy of proportional representation as a great forward step in social pioneering. This majority-rule situation is absolutely opposed to that. I do not for a moment mean that 6 out of 100 should have a separate representative. There, of course, must be reasonable limitations. But in these days when we have been struggling for a minority representation and trying to devise means whereby the majority may be heard, because we realize that often it is true that the minority today may be the real ideas of tomorrow, that is the liberals' viewpoint.

The CHAIRMAN. Do I understand from this bill that the minority can be that?

Mr. MERRITT. They cannot be an agency for collective bargaining.

The CHAIRMAN. That is true.

Mr. MERRITT. If they are not members of that agency.

The CHAIRMAN. But before any agreement for collective bargaining can be entered into they may be heard by the employer.

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Mr. MERRITT. Yes. And I dare say they can be heard after it is entered into.

The CHAIRMAN. Yes.

Mr. MERRITT. So far as they have any ideas that will not interfere with the collective bargaining or do not relate to the vital questions covered by collective bargaining. I think you are throwing them a deflated balloon when you say they may talk with the employer, but on all important matters what they have to say will be of no consequence.

The CHAIRMAN. So far as making a joint agreement?

Mr. MERRITT. Yes.

The CHAIRMAN. Between the employers and the employees.

Mr. MERRITT. And what would you say as to the administration of the agreement; for all practical purposes the parties to the agreement are the ones that are going to determine its administration?

Of course, any man, even though he is not a member of the bargaining agency, can present a grievance or can present a complaint. But for all practical purposes he is going to be dependent on the tolerance of the agency.

No, you have labor unions which are private societies. Some of them with closed books which won't take any new members. They can readily take the position, and they do take the position, as I could give you by illustrations, that they won't take in new members under certain circumstances, or they won't take in members who have offended in the past by working in open shops. They are barred by this situation even though they constitute 49 percent. I think the majority rule is wrong in that respect. I think some percentage rule might be necessary from a practical viewpoint, if you are going to have a collective bargaining agency. But why, if you have a committee of ten, you could not apply the principles you apply to corporations of collective voting and let 10 percent elect a man to sit on the board, I do not see. We did it in corporate societies because we thought it was in the interest of good administration to give the 10 percent an opportunity to be present on the board and be heard in connection with all important matters. Why should we not apply it to labor unions? The whole idea of proportional representation is designed to accomplish the same result. I think this majority rule comes pretty nearly to the idea with which Mr. Mussolini originally started, in effect if you got a bare plurality the other party is rooted out. It would be almost like saying our Senate must be made up exclusively of Democrats.

We do not even lay down any rule here which would permit a given department or locality in a factory to be represented. We do say the board can establish units of plant employee, or craft, or rather unit, which I think is rather discouraging language to the thoughts I had in mind. I think there should be something written in the law here which permits of representation by substantial minorities.

I think the program which the President laid down did represent a real step forward in the working out of really cooperative arrangements whereby all substantial interests could be represented and be heard, and I cannot believe that because of collective bar-

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gaining will be forwarded by disfranchising various groups so far as the determination of important matters are concerned. And this board has the power, as I understand it, so far as machinery for the prevention of unfair labor practices is concerned, to override code law or agreements in its discretion.

The CHAIRMAN. Suppose you had a company union that represented a majority of the employees, and you had a minority of the employees in a trade union, would it not be difficult to arrive at a bargain, a collective bargain, between the employees as a whole and the employer if the employer had to deal and get the signatures of both groups to his final agreement with his employees?

Mr. MERRITT. He does not necessarily have to get signatures to an agreement. The situation you speak of is going on, and has been going on in a great many plants.

The CHAIRMAN. The intent of this proposed law is that there will come a time after the negotiations when the employer will sign up and determine his relationships with his employees by a contract, signed by a majority of the employees, and signed by himself; is that not true?

Mr. MERRITT. Yes. If your law just went that limit I would be in a much more——

The CHAIRMAN (interposing). How much beyond that does it go?

Mr. MERRITT. It does not permit the others to sit on the collective bargaining end of it.

The CHAIRMAN. It permits them to be consulted with and to be heard.

Mr. MERRITT. In regard to the collective bargaining?

The CHAIRMAN. As I understand it, it does not permit them to sign separate agreements, and it does not permit them to be parties to the signature of a contract, but I do not think there is anything to prevent them from being fully heard in every other step, save that of final execution of the contract.

Mr. MERRITT. All it gives them is a minority interest. I think, Senator, I can look into your views very quickly, because I see what is running through your mind, and from your point of view I think I would be inclined to agree with you, but I want to explain here that I think the law is different.

The CHAIRMAN. I wish you would point that out.

Mr. MERRITT. Yes. Now, for instance, section 9:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining—

The CHAIRMAN (interposing). Is that not for the purpose of signing the contract?

Mr. MERRITT. May I just finish? If it is, why my criticism is mistaken in the form which I have presented it.

in such unit for the purposes of collective bargaining in respect of rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or group of employees shall have the right at any time to present grievances —

And that is all.

Now if your collective bargaining permitted all the substantial minorities to be represented in the negotiations and to bargain, I

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would concede that for the purpose of collective bargaining, the agreement or terms that were acceptable to the representatives of a majority would have to be an agreement and terms for the entire factory. I would not question that at all. But what I object to is that substantial minorities here are barred from the very negotiations of bargaining.

The CHAIRMAN. I did not think it was the intent of the proponents of this legislation and I do not think it was the intent of the proponents of this language not to permit groups to present grievances, nor was it intended to debar the minority groups from sitting in if the employer and the majority were willing, but in any event of their not sitting in any negotiations that they be separately heard by the employers and their grievances or their suggestions received, and in turn presented by him to the majority group. I did not think there was anything in this bill that prevented any or all groups from getting in to the employer their views and opinions prior to the signing of the contract between the employer and the majority group of employees.

Mr. MERRITT. I would not——

The CHAIRMAN (interposing). I certainly do not think there should be.

Mr. MERRITT. Yes. I think this section could be clearly improved to make that idea clear, and I think a great deal of the opposition to this question would be mollified if that could be made clear.

The CHAIRMAN (aside). Mr. Magruder is there any intention on the part of your board to recommend any different view than that I have expressed?

Mr. CALVERT MAGRUDER. Senator, it is Senator Wagner's bill. I do not believe I can tell you that as to the board.

The CHAIRMAN. I had an impression the board looked over this bill and made some comments to Senator Wagner, and that it was in fact the board's bill as well as his. It is named the Wagner bill, but I had an impression the board was not only supporting it, but had been consulted, and was a party to its phraseology.

Mr. MAGRUDER. I do not think there was any intention to prevent an employer from hearing any representatives from minority groups, but this negotiation of an agreement on basic conditions must be solely with the spokesmen or agency selected by the majority in the given unit.

The CHAIRMAN. The question is, Am I wrong about attaching the board to some authorship in connection with this bill?

Mr. MAGRUDER. The board has been consulted, as Mr. Biddle testified, by the Senator; yes.

The CHAIRMAN. I think the original bill certainly was largely made up after consultation with and the approval of the whole board, of which Senator Wagner was a member, and of course you inherited that preliminary preparation.

Do you mind, Mr. Merritt, if I make another digression?

Mr. MERRITT. Not at all.

The CHAIRMAN. Mr. Magruder is the chief counsel for the present board, as perhaps you know.

Mr. Magruder, you are of the opinion that the board would not have any opposition to such language being incorporated in this bill

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as would not prevent all groups from presenting and being heard by the employer up to the point of finally executing the contract between the employees and employers?

Mr. MAGRUDER. Senator, I understand the negotiation of the contract is to be had between the employer and the representatives chosen by the majority. The employer in deciding whether to accede to any demands proposed by the majority would, I assume, be at liberty to hear representations from minority groups who claim there is some unfairness in the proposal.

The CHAIRMAN. Assume I am going to make a contract to purchase a partnership property that is owned by partners; it may be a retail store; it may be real estate, and there are five partners in the partnership. Three of them are a majority. It may be possible that getting the approval of three of them is all I need to get for the purpose of making a contract. Should not I listen to the other two? Should not I hear them? Should not I receive and entertain all their objections? Should not I up to the point of signing with a majority of the partners, should not I be allowed to hear any of them? Any one of them would be as acceptable to me as the others for the purpose of getting full information about the agreement or contract I was going to make.

Mr. MAGRUDER. I think the partnership analogy is not quite applicable.

The CHAIRMAN. No; because all five would have to finally sign the final agreement.

Mr. MAGRUDER. Yes. I do not understand any minority group constitutes a partner in the collective bargaining agency negotiating for the employees. That would approximate the proportional representation idea.

The CHAIRMAN. Perhaps that was not a good example. I will give another one. Take a piece of real estate and there are lessees on the property and they want me to listen to complaints or objections on what you call maintenance and perhaps other things, before I make the contract of purchase as to their rights in the property under their leases, would it not be the wise thing for me to do to hear them and to let them become acceptable to me in every way possible, so I may have the full information which they know about the property and find out what their questions are as lessees before I actually make the contract with the employer?

Mr. MAGRUDER. I should think so.

The CHAIRMAN. That is a little better illustration, is it not, than the other?

Mr MAGRUDER. And I assume that the employer would not under this bill have to close his door to a committee representing the minority group who came to protest some proposed action of the collective-bargaining agency.

The CHAIRMAN. I do not see why the employer would have to refuse to hear and receive any suggestions of any minority group at any time in a plant prior to the time when he may be going to sign up a collective-bargaining contract with the majority. I do not see how there could be any reasonable objections to that. Of course, I can understand if the minority and majority were sent in together, they would be constantly quarreling, and would not get anywhere,

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but I do not see why the employer could not receive them apart from time to time, and when the time came to sign the contract he might very well say, "I have heard you fully: I know what the majority views are and I know what the minority views are, and now I must end these negotiations by dealing with the majority."

Mr. MERRITT. I feel, Senator, that the bill is really intended to prohibit that very thing, and I want to point out to you why I feel so, because in section 9 it says:

For the purposes of collective bargaining—

not of signing a bargain, but of bargaining, the representatives of the majority shall be the exclusive representatives, and then it very guardedly states in the proviso at the end that any individual may present grievances. That is a pretty narrow word.

The CHAIRMAN. I would agree with you except for those last words. I had assumed that was a condition, that text, which really meant that the minority could be heard too, perhaps not at the time the majority was being heard, but that they could present grievances before or after the contract was made.

Mr. MERRITT. Why use the work "grievances"? Present their "views" would be a far better word, if that is their intention.

The CHAIRMAN. It is assumed, of course, the thing in collective bargaining is that the employers and employees are dealing with grievances, are they not?

Mr. MERRITT. I would not say so primarily. I think "grievances" is a much too narrow word. I do not think when men sit down to determine whether they are going to get $20, $22, or $32 a week they speak of it so much in the terms of a grievance when they are dealing collectively for the purpose of a bargain. It is not a grievance. Of course, it is something you want. But I think the word there is too narrow to safely rely on for any views such as you have expressed as compared to other views which represent quite a different picture or viewpoint.

The CHAIRMAN. I personally feel very strongly that the employer should have the right perhaps to make any contract with his employees, consult with any of his employees he wants to hear from, as many different groups as he wants, to get all their viewpoints, present them in turn to his majority group, and I think the majority group of the employees ought to hear the minority also, so as to get a collective-bargaining agreement that would come pretty near preventing a strike by meeting the requirements of both a majority and the minority.

Mr. MERRITT. And to be sure every possible idea of any merit has been properly heard and considered.

You know the Labor Relations Board has definitely ordered some employers to cease bargaining with minority groups.

The CHAIRMAN. What do you mean by that? Of course, bargaining I suppose means trying to get a contract, trying to arrange a contractual relation. Is that true?

Mr. MERRITT. Yes.

The CHAIRMAN (continuing). I can understand their refusing to recognize minority groups, but I cannot understand how any minority group should be denied the right to present grievances, if it is the word there, or present their views.

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Suppose a contract is entered into by a majority of the employees and an employer, and it omitted to properly protect or properly settle some great injuries that the workmen outside the plant, who have charge of the property of the company, who were the gardeners and the repairmen on the outside of the building, let us say, and they are employees, of course, of the company, why should not they be permitted before the agreement is made, or after the agreement is made, whether they are of a minority union or an independent union, or only just ordinary employees, to press upon the employer the rights as they see them, and urge that in any contract that is made that proper stipulation should be made for their working hours, and the definition of the conditions under which they work, either before or after?

Mr. MERRITT. I think they should.

The CHAIRMAN. Why should you stop them——

Mr. MERRITT (interrupting). I do not think they should.

The CHAIRMAN. Why should you stop them just because they are not members of the packers' union, the spinners' union, the loom fixers' union, why should they be barred from going to their employer and presenting their views or grievances?

Mr. MERRITT. I think the wording of this bill is unhappy.

The CHAIRMAN. Do you think this bill prevents that?

Mr. MERRITT. I think probably what would happen from a practical point of view, in that particular instance, is that the board would rule that such a separate craft unit could be heard separately in connection with their own particular problems. That would be a matter of discretion of the board, as to whether it should so treat them or not. But I should think in the clear case you state that would be a practical solution.

The CHAIRMAN. And make a separate contract?

Mr. MERRITT. Make a separate contract.

The CHAIRMAN. I know in some of the larger industries in my own State in former days there would be a large number of people employed on what you call outside work, outside the factory entirely.

Mr. MERRITT. Yes.

The CHAIRMAN. Repairing tenement property and painting the houses.

Mr. MERRITT. And maintenance work; installation work.

The CHAIRMAN. Yes; installation work.

Mr. MERRITT. And telephone repair linemen and various kinds.

The CHAIRMAN. I think I am delaying you, perhaps. Proceed.

Mr. MERRITT. Sometimes teamsters and truckmen are employed on separate contracts.

The CHAIRMAN. This very subject is a matter which should give us attention, and I know it has been the source of a great deal of consideration by members of the committee.

Mr. MERRITT. The next point to which I specifically want to call your attention has probably been called to your attention by other people who have presented their views.

I have no quarrel with the statement of section 7, which says the employees shall have the right to self-organization, and so forth and so on.

The CHAIRMAN. Before you leave that other subject, I can conceive of the drafters of this bill recognizing a situation where a minute

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minority might make themselves offensive, and by insisting upon seeing the employer by insisting upon presenting their views again and again, and may ultimately become an obstructionist to the working out of the workable contract between the majority of the workers and the employer.

Mr. MERRITT. Such a thing is conceivable, but that is only the travails of childbirth. This thing would be under the supervision of the board. The board can pass upon the question as to whether reasonable negotiations have been carried on, and when they should be stopped, and when it is obstruction, and various questions of that kind which might come up. I can conceive of a far worse state of discord arising from the alternative.

The CHAIRMAN. By dealing with the majority alone?

Mr. MERRITT. Exactly.

The CHAIRMAN. And absolutely pushing aside the minority group?

Mr. MERRITT. Exactly.

The CHAIRMAN. Excuse me again.

Mr. MERRITT. Coming down to section 7, you declare what shall be the rights of the employees. We accept that as a proper declaration, but we do object most emphatically to section 8, which says that "it shall be an unfair labor practice for an employer" to interfere with those rights. If they are rights worthy of legislative declaration, they are worthy of protection.

The CHAIRMAN. You are dealing now with what the proponents consider the very heart of the bill. You realize that?

Mr. MERRITT. Yes. And I am not attacking the declaration as to the rights of employees, but I am attacking the idea that a right set up by a declaration of Congress shall be protected only from coercion on the part of an employer. I think it should be protected from coercion on any side. We all object to coercion or tyranny. We all recognize that it may rise from more than one source. That is one of the points which you find most criticized in many discussions of this bill with various employers and personnel men, who have a very deep interest in the proper solution of this whole subject of labor relation. They feel that it is absolutely unfair and partisan to declare a right to protect it from coercions from one source and not in any way to protect it from coercion from another source. One could give a great deal of discussion to that, but the idea is simple and has probably been repeated to you so many times I do not feel like taking your time to amplify it at this moment.

The next point to which I wish to call attention is the reference to so-called "company unions" as distinguished from what I might call class unions.

The CHAIRMAN. Where is that? I think we refer to the others as trade unions.

Mr. MERRITT. Yes.

The CHAIRMAN. But you call them class unions?

Mr. MERRITT. Yes. I think I did that because I have always thought the name "company unions" was rather invidious, so I was choosing a retort courteous.

The CHAIRMAN. Yes.

Mr. MERRITT. Let us call them trade unions.

In subdivision (2) of section 8 there is a provision "to dominate or interfere with the formation or administration of any labor organ-

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ization, or contribute financial, or other support to it." Let me start by conceding that no employer should dominate a labor organization. It is a sham if the employer dominates it. It is not functioning as an instrument of collective bargaining should function. You might better have no organization than one that is dominated by the company. I concede that. I am not criticizing that wording of the bill which uses that word. On the other hand, I have heard a great deal of criticism, which I share most sincerely, with those provisions there which have reference to the employer contributing financial or other support to the company union. I think if we start with the word "dominate" we have gone far enough without going into the other details. If financial support should be so overwhelming that it resulted in domination, that is one thing. One would have to reach a conclusion by virtue of money equal with that word "dominate" so that the financial support to that extent should not exist. But you gentlemen undoubtedly——

The CHAIRMAN (interposing). I must leave the committee for a while, and I will ask Senator Murray to preside, and I will try to get back in about 15 minutes. We will keep in session until 1 o'clock. There is no session of the Senate today.

Mr. MERRITT. I realize these are busy days.

The CHAIRMAN. I am sorry I have to go out. I received a call, and I will return shortly.

Mr. MERRITT. I realize these are busy days.

preme Court in the Texas and New Orleans care are not improper words to use for a bill that has these objectives, but to definitely state that there shall be no financial contributions for the support, is to my mind a very unfortunate thing, because that financial or other support often takes the form of minute, enthusiastic, sensible, wise arrangements between employers and employees in connection with these company unions, which should be given the widest possible latitude and flexibility, provided they do not reach the standard of domination. Your company unions may have the facilities of an office. They may have the facilities of a bookkeeper. They may use the company printing plant for their literature. I am not familiar enough with all these details, being a lawyer, to give you all of the possible illustrations which under a captious agent of this board might be construed as a financial or other contribution. I do not see that the words are necessary to the attainment of the promoters of this bill insofar as aims in this bill are and should be assumed to be reasonable. If you use your general language of dominate and interfere and leave all arrangements, of which there are a multitude of varieties between a company and a company union to be tested by those words, then you have gone to the heart of the whole matter without hampering what has proven to be in many respects the best forms of industrial relationships which have existed in any land.

There has been so much reiteration about the company union that it has come to have a bad name in the merits of many people. The wise employer, like the wise social worker, does not go around and publicize what he is doing with his employees, and what arrangement he has for cooperation, with the result that all that he has accomplished in that way has not had the same hearing as has been given the outside organizer, who has promoted his interests more

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by public propaganda than by intensive workings and intimate workings inside the industry.

It is true that following the war the system of industrial relationships set up through this so-called "company union" in the United States commanded the admiration of the world. The committees came from Europe, or commissions, to study how it was there was such a wonderful spirit of cooperation existing between such large bodies of people as prevailed in some of our large corporations where these so-called "company unions" existed. I think if one goes back and looks at the picture or to the depression they reach the conclusion we had attained a higher basis of cooperation and good will through importations of that character than had ever been reached in any country in any time previously in connection with any large groups engaged in industry.

It is for this reason that, feeling as I do, that these intimate contacts have inspired such a feeling of good will and cooperation on the part of employees that I just like intensely to see them hampered or interfered with by any law which might be construed to prohibit any legitimate means to promote that cooperation.

The sham company union, of course, should go. No one is trying to defend it. The company union that is set up merely to be a counterirritant, or as a camouflage, not to work out in good faith the best interests of the employees has no justification that legislatures need recognize or should recognize, and also the union which is dominated or interfered with and is not given some prior scope; but why we should follow those words "dominating" and "interfering" with a provision that any financial or other support pertaining to the company union, however insignificant, specifically and expressly declared to be unfair labor practice, I do not see.

For that reason, leaving that subject with you, I feel very strongly that there should be an amendment to the bill in that respect.

Senator MURRAY. However, would the employer be entitled to go without being regarded as dominating this union?

Mr. MERRITT. We cannot sit here and define adjectives or words of such broad connotation, because that will ultimately have to light with your administrative board, which will be well able to deal with that problem. If I were trying to define it I should say that any attempt to interfere with the normal function of that board as a collective bargaining agency, acting independently, would constitute domination of that organization, and an interference with its legitimate function and a complete destruction of its justification for existence.

Again, I am afraid I am not helping you, because I am simply using more words, but I think it is one of those situations where you cannot codify every detail as to what shall constitute domination and interference, and it is a mistake to pick out some little detail like contribute financially or other support and say that shall be an additional test over and above the test of domination or interference. I do not think it should be the test. I think minor cooperation with these company unions in facilities and things of that kind should not be interfered with because they are accomplishing such a tremendous amount of good. And I hesitate to see the Congress of the United States step in and obstruct these relationships which have

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been of such far-reaching social benefit to the country. We come, then, to section 12 in regard to arbitration.

In that section the drafters of this bill have undertaken to adopt the language which is used in so many arbitration statutes, whether for commercial arbitration or for all kinds of arbitration. It is attempting to place behind the procedure of arbitration the dignity of a court judgment. It must be set up there on the belief that arbitration has an important function to perform in connection with industrial disputes, and may be a very useful instrument in promoting industrial peace.

I, personally, am in accord with any program which seeks to promote voluntary arbitration.

In this attempt to dignify arbitration it is provided that a written agreement relative to arbitration shall be valid and irrevocable except on certain grounds in law and in equity. It is further provided if a party entering into such an agreement shall fail to go ahead with the arbitration, the Board in its discretion may proceed ex parte to hear a case and render an award. That, too, is not without precedent.

In many arbitration laws we have provisions to the effect that the arbitrators shall be appointed in a certain specified way. And if either party fails to perform the other may appoint the arbitrator. If the parties fail to appear the arbitration board, as already instituted, shall proceed with the arbitration. The point is to make an arbitration agreement irrevocable, to make its consummation automatic so that nothing can stop it, to make double sure there will be an award which is binding on both of the parties.

In that connection, also following precedent in arbitration laws, it is provided that the Board shall file the award in the United States district court designated by the agreement, or if no particular court is designated by the agreement, shall file it in the office of the clerk of the Supreme Court of the District of Columbia. And then unless the award is impeached, and there are provisions of a proper nature for its impeachment, the court shall enter judgment in accordance with the terms of the award.

The court shall enter judgment in accordance with the terms of the award, that is the finality, the dignity of a judicial decree binding on both parties. But there comes this amazing proviso:

> *Provided,* That no employee individually, and no group of employees collectively, shall be compelled to render labor or services without their consent.

Now, I do not know just what that means, but if it means what I think these people intend to have it mean, it should not be there. No court ever would undertake to compel an individual to render services collectively or individually. That would be contrary to the thirteenth amendment. Even in the case of extraordinary services, like prima donnas and actresses, you cannot order them to perform their contract. You simply prohibit them from utilizing their services elsewhere. You cannot order people to quit work or to go on and perform work except after they have been duly incarcerated. But that section has to be read, or that proviso, in connection section 15, which says:

> Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

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If arbitration is to be a useful instrument of industrial peace it must be respected and binding on the party, and organized strikes maintained to overthrow an arbitration of war they should not and must not receive any implied sanction from any legislative enactment.

As I quoted from Mr. Justice Brandeis, strikes may be legal or illegal, depending upon their purposes, without regard to whether they are carried on in an orderly way, and strikes in violation of agreements, strikes in violation of arbitration or arbitration agreements, those agreements too having an award, are unwarranted socially and are contrary to all the instincts of our sense of fair play. And yet we are writing a law here which says we must deal with these labor unions and function through them, but that they can strike if they do not like an arbitration award after they have agreed to be bound by it.

That, gentlemen, is one of the things to which I referred at the mere opening; it is a mere question of right and wrong, decency or indecency. It is not any complicated question of economic social policy. It is a sort of question any man on the street thoroughly understands.

If labor unions secure agreements, if they agree to arbitrate, as they did in the Building Service Union in New York, and then struck in violation of it, why they are simply overthrowing the arbitration award, they are overthrowing the agreement.

I do not contend that men shall be individually required to work. Every man individually has got the right to quit work at any time. Collective agreement never require men to stay at work. They simply provide terms and conditions upon which men will work as long as the employers hire and the employees work. That is all they provide for. But a group of men working by prearrangement and concert of action, enforcing their acts by picketing, strike benefits, and directions of officers to bring about the overthrow of an arbitration award is one of the most dastardly attacks on the promise of individual peace in this country. And by saying, I do not know what that means, "that no employees shall collectively be compelled to render labor", I do not know as you could collectively compel employees to render labor, still I am opposed to that, because I feel that it is designed, as is the clause in 15, to give these people freedom of action to torpedo the processes of arbitration, which is the most obvious thing, one of the most obvious things we have in this bill for industrial peace.

I think Senator Wagner has referred at times to the Railway Labor Act as an act after which this is patterned, but the pattern did not suit in this particular.

The act in substance provides that no employee individually shall be compelled to render labor or services. But here we have put into the bill "No employee individually and no group of employees collectively", which means nothing if you come to common sense, "shall be required to perform services."

For instance, it is rather amusing, and if you would pick out of that sentence the words "No group of employees collectively", it means something. It is a perfectly sensible statement that no employee individually shall be compelled to render labor or services without their consent, but by inserting this other clause, which is

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going further than had ever been gone by any legislature in this country, "and no group of employees collectively", you make a perfectly ridiculous statement; and in addition to that you tend to put the gloss of legislative and moral sanction on something which is reprehensible.

I was saying before you gentlemen [indicating Senators Donahey and Murray] came in, drawing out of my experience just in this last winter, that in connection with the elevator strike in Manhattan, New York City, where I represented the realty interests, an agreement had been signed to the auspices of Mayor LaGuardia and the Borough President of Brooklyn, Raymond I. Ingersoll, and the Regional Labor Board, which provided for the arbitration of certain wages and hours and certain other conditions. And the arbitration took place with the union president as one of the arbitrators, and with Maj. Henry H. Curran as the chairman. And when the award did not suit them they called their strike. And within a period of about 10 days or 2 weeks we had a series of strikes of a general nature in violation of agreement, in violation of arbitration agreement.

Let us not put the impression of approval upon any such actions even by any ambiguous provision of this character. But we have got to reach the viewpoint sooner or later, and we have got to have the courage to face it, that Justice Brandeis reported in his Supreme Court decision, which I read before you came in, that there are lawful and unlawful strikes, and that industrial warfare, while an indispensable unit when employed for the purposes of justice, can become tyrannous and oppressive and should be discouraged when it is employed for antisocial and unlawful purposes.

Now, I know how jealously the labor organizations fear the slightest encroachment upon the power of collective action, but we have got to recognize that the power of collective action is the power for great good or ill. We want to have it unleashed for its good purposes, but we want to see that it is adequately restricted in the public interest when it is used for improper and antisocial purposes. And it is in the interest of that general moral idea that I suggest that there should be some consideration given to an amendment of that function of the bill.

May I speak to Mr. Emery just a minute?

The CHAIRMAN. Yes.

Mr. MERRITT. I just spoke to Mr. Emery to see how quickly he thought I could bring my presentation to a close.

On this question of procedure here, however, would you like to have me say a word about that to you, Senator?

The CHAIRMAN. Yes; you might. Senator Murray has called attention to your criticism to the language on page 19 (c) of section 12.

Mr. MERRITT. I feel his way about that: Arbitration is here set up as a solemn pact, and the design is to promote arbitration as a peaceable adjustment. I do not think it is proper to provide for arbitration and then provide in effect that men may go out and strike in violation of the award, or to overthrow the award.

There is a great distinction, as you undoubtedly know, between the right of men to quit work individually and the right of men through the machinery of organization to quit work in combination or in concert. No one questions their right to quit work individually.

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That would be a fair state of affairs if that could be done. But the organized use of the force and coercion of a strike to overthrow an arbitration award, which is entered into as the result of a voluntary mutual agreement of arbitration, should never be encouraged or receive any sanction whatsoever.

You will remember, Senator, I spoke about that situation in New York where that had happened just this last few minutes ago.

The CHAIRMAN. Yes.

Mr. MERRITT. And I pointed out here that while this bill was patterned after the Railway Labor Act this clause here about no group of employees collectively was not in the Railway Labor Act.

The CHAIRMAN. Was not in the Railway Labor Act?

Mr. MERRITT. Was not. And there is a provision in the Railway Labor Board Act, "No employee shall be compelled individually to render services", that I am entirely in accord with. I see no objection to that. And so they added to that by stating in this bill "that no employee individually, and no group of employees collectively, shall be compelled to render labor or services without their consent." I do not know how anyone could compel a group of employees collectively to render labor or services, but if it means you have got the right in an organization to strike and overthrow arbitration agreements I am very much opposed to it as being unsound from all viewpoints.

I have not attempted to go into the questions of procedure. I think there are a number of very dangerous provisions there, but I prefer to pass them over.

The CHAIRMAN. Have you discussed the interstate commerce provisions of this bill?

Mr. MERRITT. I have not; no.

The CHAIRMAN. Have you made a study of the cases of Interstate Commerce such as——

Mr. MERRITT. Not for the purpose of this act, but I feel myself very familiar with some because of my connections with some of them.

The CHAIRMAN. Mr. Emery has presented a very excellent analysis from his viewpoint of the interstate commerce connection.

Mr. MERRITT. I have not seen Mr. Emery's brief in this connection, but I have seen his briefs in cases on that viewpoint, and I am absolutely in accord with those viewpoints.

The CHAIRMAN. Your analysis would be a repetition of what he has said on that point?

Mr. MERRITT. Yes; but possibly I could discuss briefly with some effect one case, which I understand has been brought here into the discussion. That is the case of *Bedford Stone Co.* v. *Stonecutters* in 274 U. S. I understand that Senator Wagner has placed some reliance on that case as justifying the power of Congress to enact this bill.

I was in that case from the beginning, and am entirely familiar with its holdings. There is nothing new or original in the *Bedford Stone case* that did not already exist as far back as the *Danbury Hatters' case*. There is no doubt whatsoever that local means may be employed to restrict interstate commerce in violation of the Sherman Antitrust Law. That has been settled in a great many cases. That is all that was decided in the *Bedford Stone case*.

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The producers of Bedford Stone were in Indiana. They distributed their stone to various parts of the country. We will say that some stone goes to Denver, Colo. The union had a strike in the factories in Indiana, and wanted to unionize not the factories, but the quarries and mills. They could make no headway at the point of production, because the employees did not follow the leadership of the union. Therefore, the stone companies went on producing stone.

The CHAIRMAN. Went on doing what?

Mr. MERRITT. Went on producing stone. The production of the organization was fine and satisfactory from the employers' viewpoints. The stone was then shipped to various parts of the country, and part of it goes to Denver, Colo.

There a local branch of the international union, which had tried to unionize these stone companies in Indiana, decided to cooperate, and the officers of the local branch ordered their men not to handle the stone. It was purely a local interference. Nothing was done so far as that incident was concerned, except it was done in the State of Colorado, in the vicinity of that particular city.

The Supreme Court held, there being many instances in different States, that that constituted a combination to restrain interstate trade. And why? Because that lawless interference was entered into solely for the purpose of restraining interstate trade. The object which they sought to attain was to change the industrial relations existing back in Indiana. The only way they could attain that in Colorado was by affecting the flow of that stream of the trade from Indiana to Colorado. The only way they could do that in Colorado was by erecting a dam in Colorado so there would be no set-back of that stream and it would not keep on flowing.

The Supreme Court very properly held since the purpose was not a local one, although the activity was a local one, since the purpose was not to change in any way Colorado, but to change something back in Indiana, and the only connection between Indiana and Colorado was this stream of interstate commerce, that therefore the local means of restraining interstate commerce constituted a violation of the Sherman Antitrust Law, and was something when done for that purpose which Congress had the power to prohibit.

The same situation has arisen in many other cases. In the *Danbury Hatters' case* you had a strike to stop production, you had a boycott in San Francisco to prevent goods from being distributed when they reached San Francisco. The Supreme Court held, in language that I do not recall at the moment, that it did not make any difference that the means of accomplishing this end the goods were in a particular State before the goods started, or in a particular State after the goods arrived, if the direct purpose was to restrain interstate trade.

The *Coronado Coal Co. case*, which Mr. Emery discussed, is a very excellent one, and also the *Herkert & Meisel case* (281 U. S.), I think it was. The Court held in the *Coronado case* in the first decision, although these mines produced coal almost exclusively for interstate consumption, nevertheless, inasmuch as the interference by labor unions to destroy the products in that particular State, which resulted in stopping the flow of commerce into other States, was not

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a violation of the Sherman Antitrust Law, not within the jurisdiction of Congress, by implication if the fight were a local one, and the purposes were a local one, and the battle was around a local issue the Supreme Court set aside the verdict and judgment of a very large sum of money, as I recall, on that ground.

The case then came back for a new trial, and on the new trial testimony was given to some extent, as I recall it, out of the mouths of some of the labor leaders themselves, or ex-labor leaders, to the effect that the purpose was to restrain interstate commerce. And it was held as the result of that trial that there was a proper issue to go to the jury as to whether it was a combination to restrain interstate commerce. So that all there is to this *Bedford Stone case* and these other cases is the principle that has been laid down in a large number of cases.

I could state right here that where your local activity is designed and intended to accomplish an interstate commerce result, there you have a right to prohibit that because of its direct effects upon interstate commerce.

May I state one other example? This was an action as I remember it regarding some oppressions of the American Sugar Refining Co. If that is the wrong company I apologize to it in advance. A competitor was starting up in Philadelphia by the name of the Pennsylvania Sugar Refining Co., and the American Sugar Refining Co., through a broker, got control of the stock on a loan of the Pennsylvania Sugar Refining Co. Then, having control of that stock, they voted not to let it start in business. It was nothing but a proposition of controlling the stock by buying the stock of that corporation. It was held after long journeys through the courts that that was an effort to restrain interstate trade.

The CHAIRMAN. Do you subscribe to the doctrine that the outlet of interstate commerce is part of interstate commerce and therefore is subject to regulation?

Mr. MERRITT. I absolutely do not. The cases are absolutely opposed to that in a good many of them.

The CHAIRMAN. It would be necessary to set up that principle in order to have this bill, for illustration, apply to department-store employees, would it not?

Mr. MERRITT. Yes.

The CHAIRMAN. Or retail stores of any kind?

Mr. MERRITT. Yes. The attempt to regulate internal operations in a producing unit because that producing unit shipped into interstate commerce runs amuck against a great many decisions of the Supreme Court of the United States. There will have to be a complete change of front to sanction an attempt of this kind.

The CHAIRMAN. Do you think that the Supreme Court is still adhering to the doctrine that production in and of itself is a matter of intrastate legislation?

Mr. MERRITT. Senator, of course we know if you go back to *United States* v. *Knight*, I think it was One hundred and Fifty-sixth United States Reports, where they said it was not a violation of the Sherman Antitrust Law for various producing units to combine together, as I recall it, and we know we departed from that ground, but we departed from it a great many years ago. The *Knight case* has been

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largely exploded. But we recognize if all the units in a particular State produce, we will say, a product which comes only from that State should combine together to fix prices of goods going in interstate commerce there might be some question. But the Supreme Court, since it adjusted itself to that Knight decision, has not, in my opinion, deviated at all from a careful definition of this limitation on sovereigns' power, and has laid them down recently in a very large number of cases.

I should say it was not receding a bit at this time from the general proposition that products from oil wells, products from mines, and manufacturing products, and so forth, were not commerce and were susceptible to regulation by the Federal Government.

The CHAIRMAN. Would you care to name what industries in your opinion under the decisions of the United States Supreme Court would be subject to this bill as engaged in interstate commerce, other than railroads, telephone, and telegraph companies? [A pause.]

Perhaps you would rather not answer that.

Mr. MERRITT. I would like to think a minute. They are all, of course, subject to regulation of Congress in their interstate activities in the distribution activities, but offhand I do not think of any of the industries that would be subject to the regulations of this bill.

The CHAIRMAN. Do you think the steel industry and the automobile industry would in all probability raise constitutional objections to this bill if it is enacted in the law?

Mr. MERRITT. I think they would have every reason to resist it; apparent reasons in the law.

The CHAIRMAN. Would one of the reasons be they were not subjected to the interstate-commerce provisions of the bill?

Mr. MERRITT. Yes.

The CHAIRMAN. If they are producing in a State and were subject to the laws of that particular State where they are producing?

Mr. MERRITT. Yes.

The CHAIRMAN. Mr. Emery, are you in accord with that view? I thought you had a little more liberal view.

Mr. EMERY. Pardon me?

The CHAIRMAN. I thought, using Mr. Wagner's expression, you had a more liberal view, having been under his tutelage so long.

Mr. EMERY. I think Mr. Merritt has laid down the principles involved.

The CHAIRMAN. He is an unwise man who dare say what the Supreme Court will do today, is he not?

Mr. MERRITT. I am sure you won't find me unwise enough to attempt to do that.

The CHAIRMAN. Perhaps "dare" would be a better word than "unwise".

Mr. MERRITT. I want to thank the committee very much. I hope it will give very serious consideration to this whole thing of trying to determine what is a fair or unfair labor union that will have the benefits of this act.

The CHAIRMAN. We appreciate the giving to us so much of your time and giving us the benefits of your extensive study of this question.

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STATEMENT OF W. N. WATSON, SECRETARY OF THE MANUFACTURING CHEMISTS' ASSOCIATION

Mr. WATSON. Mr. Chairman, I should like to ask to have the privilege of filing a brief.

The CHAIRMAN. What is your full name?

Mr. WATSON. Warren N. Watson.

The CHAIRMAN. And where do you reside?

Mr. WATSON. Washington, D. C.

The CHAIRMAN. Are you an attorney?

Mr. WATSON. No.

The CHAIRMAN. You are the secretary of the Manufacturing Chemists' Association?

Mr. WATSON. Yes.

The CHAIRMAN. You have offices in the Woodward Building in Washington?

Mr. WATSON. Yes.

The CHAIRMAN. And in your capacity of representing that association you want to file a brief?

Mr. WATSON. Yes.

The CHAIRMAN. That may be done. (See brief p. 790.) Thank you.

There are five young men here from the Sobol Bros., which is a subsidiary of the Standard Oil Co. Will you all come forward, please? Which one would like to be the spokesman?

Mr. COLLINS. I will be the spokesman for all of us.

STATEMENT OF JOHN COLLINS, APPEARING IN HIS OWN BEHALF, A REPRESENTATIVE OF SOBOL BORS., INC., ALONG WITH FOUR COEMPLOYEES, CLARENCE M. J. CRYSLER, JR., A. L. SHAW, GEORGE E. TAYLOR, AND OSCAR RANEY

The CHAIRMAN. What is your full name?

Mr. COLLINS. John J. Collins.

The CHAIRMAN. And your residence?

Mr. COLLINS. 840 Grand Concourse, New York. I am employed at One Hundred and Forty-ninth Street and Southern Boulevard, Bronx, New York.

The CHAIRMAN. In what capacity?

Mr. COLLINS. In the capacity of being in charge of the service station of Sobol Bros., which is a division of Socony-Vacuum.

The CHAIRMAN. How many service stations has your company in Greater New York?

Mr. COLLINS. About 160.

The CHAIRMAN. You and the others associated with you are connected with the company in service work?

Mr. COLLINS. We are all on the service stations, sir.

The CHAIRMAN. You are not all at the same station, however?

Mr. COLLINS. No, sir.

The CHAIRMAN. Each has a separate station?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. How many are employed under you at your station?

Mr. COLLINS. I have about 10 men under me.

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The CHAIRMAN. And you are in charge of those 10 men?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. Now, what would you like to say about this bill?

Mr. COLLINS. We say we have a company union in Sobol Bros. You will recall I was down here last year to talk about that company union. Last year I thought it was a very good thing.

The CHAIRMAN. Let me ask you about your company union first before you give us your views. Does the company union include all of the employees of the Sobol Co.?

Mr. COLLINS. The company union includes all of the employees of the Sobol Co. who care to participate in this employee representation plan. And in our recent election——

The CHAIRMAN (interposing). Are they merely service workers of Sobol Co., or office workers also?

Mr. COLLINS. No, sir; just men on the station themselves.

The CHAIRMAN. Have you one union or more than one union?

Mr. COLLINS. We have one employee-representation plan.

The CHAIRMAN. How many members in that?

Mr. COLLINS. There are about 1,000 employees; 11 delegates, 1 for each branch.

The CHAIRMAN. About how many?

Mr. COLLINS. About 1,000 employees.

The CHAIRMAN. Do all the employees vote under the representation plan?

Mr. COLLINS. All may vote, and about 98 percent did vote in the last election.

The CHAIRMAN. When was the last election?

Mr. COLLINS. In November.

The CHAIRMAN. Last November?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. And you have them every year in November?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. You say about 98 percent voted in the last election?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. And how many representatives did they choose?

Mr. COLLINS. There were 11. There was one for each division.

The CHAIRMAN. Are you one?

Mr. COLLINS. Yes, sir. And 3 of these other men are, and 1 is not.

The CHAIRMAN. How ofter do these 11 meet?

Mr. COLLINS. We meet every 3 months automatically, or more often if we care to call a special meeting for a particular purpose.

The CHAIRMAN. What do you discuss at these meetings every 3 months?

Mr. COLLINS. Most anything which occurs in the stations; things which an outside union would not touch, consisting of anything we are confronted with on the stations, things an outside labor union would touch, such as labor, hours, wages, and also anything under the sun which occurs in those stations we discuss and we settle.

The CHAIRMAN. Do you discuss them among yourselves first?

Mr. COLLINS. Yes; we discuss them among ourselves first, and also the other way.

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The CHAIRMAN. And then you go to the representatives of the company, or do you discuss them in the presence of the representatives of the company every 3 months?

Mr. COLLINS. We have tried both methods. Sometimes we have met before to discuss certain problems as to some former procedure, and sometimes we discuss them in the presence of the other 11 members of the company.

The CHAIRMAN. How many members has the company representing them?

Mr. COLLINS. Eleven.

The CHAIRMAN. They have 11 and you have 11?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. Is there such a thing as members in this organization where each one has a card or pays dues, or anything of that kind?

Mr. COLLINS. No dues, no cards, and no memberships. If you care to participate, all right; if you do not, all right.

The CHAIRMAN. There is no constitution?

Mr. COLLINS. There is a constitution and there are bylaws.

The CHAIRMAN. There are bylaws. These provide for any person who wants to become a member that he does so by voting?

Mr. COLLINS. Automatically he is a member; inasmuch as he is an employee of the company he is a member.

The CHAIRMAN. But the principal activity of the ordinary employee is to vote and to present his grievances to the 11 representatives?

Mr. COLLINS. That is it.

The CHAIRMAN. Is that right?

Mr. COLLINS. Before a meeting the 11 representatives take a day off and go around and contact the stations in our particular division. We want to find out what the problems are in the minds of the men. And we will discuss those problems at this particular meeting which we have. And then we take a day off following the meeting and go around and discuss what took place at the meeting. Besides this we have typewritten minutes of the meeting sent around to the individual stations.

The CHAIRMAN. Have you any written contract with the so-called "company" with reference to your working conditions?

Mr. COLLINS. No, sir; no written contract.

The CHAIRMAN. Your terms are agreed upon orally from time to time at these meetings and then put in operation?

Mr. COLLINS. Exactly.

The CHAIRMAN. Are you paid for attendance at these meetings?

Mr. COLLINS. No, sir.

The CHAIRMAN. Are you paid for the day you have off afterward going around seeing the men?

Mr. COLLINS. Yes, sir. We are given that day off in order to contact our individual division.

The CHAIRMAN. Given 1 day before or 1 day after?

Mr. COLLINS. One day before and 1 day after.

The CHAIRMAN. And how about this other day you mentioned?

Mr. COLLINS. Yes.

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The CHAIRMAN. You have 3 days off?

Mr. COLLINS. Yes.

The CHAIRMAN. How much are you paid for these 3 days?

Mr. COLLINS. The same amount we get working at the station.

The CHAIRMAN. Just the same amount you get working at the station?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. And no more?

Mr. COLLINS. Yes; no more.

The CHAIRMAN. Are any other favors extended to the 11 representatives?

Mr. COLLINS. No, sir; not one favor.

The first meeting we had at the Hotel Commodore was to be preceded by a dinner. We thought, inasmuch as we were actuated, if that can be called that in these days, by the real purpose of helping the men, we thought that we would be freer if we met without any dinner, and not in a hotel but rather down in the school, where they have a school of instruction for the men when they first come into the company; and we met down there, which is naturally a building of the company, and we discussed our problems and other information down there, and nothing in the way of a dinner or anything else connected with it.

The CHAIRMAN. That was the first thought—that the 11 representatives of the employees meet with the 11 representatives of the company and you would have a dinner, and you decided that was unwise, and you now meet in a call of the company and discuss your problems there together?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. Now, will you proceed and make any statement you desire in reference to this legislation?

Mr. COLLINS. So far as I can see, as I said before when I was down here a year ago, at that time our plant was only in operation about 8 months; since then obviously it has been in operation a year and 8 months, and instead of having become skeptical and feeling it is not working we have become convinced more than ever it is the proper representation for men in a company such as ours. It is a natural organization.

For an outside labor organization to try to come in and organize us and be analogous it would have no place because it would be an extrinsic organization coming in to tell us employees, who are part and parcel of this enterprise, just as to how that particular enterprise should deal with its employees is entirely wrong.

We formed an institution composed of company employees and employers' representatives, and we have within that institution the means whereby we can settle anything that comes up within that company.

The Government has been only too willing to foster the American Federation of Labor, and that is all right, that is their own idea, but maybe they were not so right in doing that; maybe they should have considered the company union and built it up and tried to strengthen it, help it along; instead of denouncing the little people and denouncing it, they should have built it up, as the gentleman said awhile ago.

Sometime ago, after I graduated from the Wood-Clinton High School in New York City, I went to see a teacher who used to teach

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me, and to speak before her class. When introducing me, she said, "We have one of our alumni here. He is interested in a company union. He will tell you something about company unions." Before she said anything to me to say anything about them, she said, "How many boys in this room are in favor of a company union?" And nobody raised their hands. And she said, "How many are against a company union?" And everybody raised their hands. And she said, "How many know anything about company unions?" And two people raised their hands. Which just goes to show you how the modern minds are molded by the propaganda put out against company unions today.

As I said, the company union is a natural thing. Our company or any company is an institution. It is an enterprise in which we are all interested, and our relations with each other arise from the set-up in that particular institution. My relations with my employer are natural relations arising within that company. For somebody to come out who is extrinsic and tell me what to do is analogous to being radical.

Instead of the Government trying to help us build up our plan, help us with our bylaws in that company, they have not even considered it at all, and they have rather considered legislation to cut out company unions.

I am just as much against the sham company union, a subterfuge company union—and I know plenty of them—as any other American Federation of Labor member is. They are just straw men, and I can knock them down just as anybody else can. And I will. But where a company union is a proper type, it is a different thing. And we have an outside board of arbitration outside the company. If we have a problem which the company and the employees cannot get together on we go outside and solve it with this board.

The CHAIRMAN. What is that board of arbitration?

Mr. COLLINS. If we have a problem we cannot solve——

The CHAIRMAN (interposing). You name a representative, and they name a representative, and then they name a third?

Mr. COLLINS. Yes, exactly. It might be you, Senator Walsh, it might be Senator Wagner, or the National Labor Relations Board, or it might be anybody.

The CHAIRMAN. Have you had any experience with that?

Mr. COLLINS. No.

The CHAIRMAN. You have been able to adjust them?

Mr. COLLINS. Yes. Of course, we have difficulties. Everyone does. And you do in your own family, too. And we fight. But you would not say "Do away with the family just because of some difficulties."

The CHAIRMAN. We have a lot of difficulties in the Senate.

Mr. COLLINS. Yes; you have a lot of difficulties in the Senate, but you would not want to do away with the Senate; I mean that is an important concommitant to the body. You are bound to have arguments in a democracy body.

The CHAIRMAN. Not only a democracy body, but in the Democratic Party.

Mr. COLLINS. But as a body.

The CHAIRMAN. I think it applies to both.

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Mr. COLLINS. That is probably true, even though I am a Democrat.

Don't you see, when you are fostering the American Federation of Labor you are fostering a body automatically—I am not saying this in order to raise a scare, just to talk—that is going to lead to a communistic form of government, because the American Federation of Labor and other organizations of that type are predicated on contention.

They won't stop so far. That is their very existence. That is their life. They do not want unity and harmony. They do not want to settle problems. If they wanted to settle problems, they would not have jobs. They have to live on strife. Once they do a thing for an organization, what happens? I want more.

I am not a part and parcel of the American Federation of Labor when I join it. I am only a member as long it gets something for me. What will happen when I get 48, 30, 20, and 10 dollars more? The result will be that there will be no profits for industry, and the Government will take over the operation and the ownership. What is that? Communism. Of course it is. If we want communism, we ought to step up and take it now instead of going at it by easy stages.

Here we have an organization which is naturally and philosophically sound.

I was in church yesterday, and there was something said about "Cast out the devils from this dumb man." He was accused of being so from the power of Beelzebub, and yet he was supposed to be the same man. It was asked as to how to do that. And the answer was, "A house divided against itself must fall." That is the same as you people here. You are really trying to help labor. What you are doing is leading to a communism form of government. You say you do not want it, I believe. Yet you are most inconsistent by putting out this form of organization on collective bargaining and sponsoring the other type.

There is not anything much left I can say, except I would like to see some provision—or I would like to see some sort of legislation or some sort of help given—to company unions right now. I say, take the wrong kind out. I could give you plenty of them. Throw them out. They are a sham. People know about the wrong kind. They do not know about the right kind. Knowing about the wrong kind, they include us in the wrong kind.

We have difficulties on our stations. The men never have been and never will be completely satisfied. Labor is a service, and it has a responsibility. I am interested in my company. I have a certain loyalty to it, regardless of what people may say about it, whether right or wrong, whether people say Sobol Bros. are a bunch of crooks; and they may say that, and I do not know whether they are or not. I would not say they were or not. Probably they are not. However, I would feel a certain pang of resentment against a statement like that, because I am a member of that company.

Our lives are made up of loyalties. That is one part of our lives—loyalty for the people for which we are working.

What are we working for? If we are members of the American Federation of Labor, we are working for the success of the American Federation of Labor and their higher officials. I won't go into discussing the particular points of the American Federation of

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Labor. I do not need to do that. It has been done by those better qualified and better informed and with more information than I can give here.

One of the men that is now one of our company representatives was formerly in a labor union; and another, who is not here, was also a member of a labor union. And they will tell you what they are.

The CHAIRMAN. Has the American Federation of Labor attempted to organize your company's employees?

Mr. COLLINS. They came around to many of the stations in the beginning and had a circular. They wanted to know what they were paid, the wages, the hour conditions, and so forth; and they were told they were good at the station, that they were all right and a good outfit, and the men liked to work for them, as a rule. But this man came around with this pamphlet. He said, "You ought to organize." Of course, the fellows are practical at the station. They said, "How much?" He said, "Two dollars a month."

They said, "What things are they going to give us that we don't already have?" The fellows laughed them off the station. Some of the fellows would not allow them on the stations at all—chased them off—because they felt these men had something for the men which was wrong.

I gathered them in. I said: "Come on in. What have you got to discuss? What is your proposition?" And the men could not see they would get anything that they did not already have.

The advantage of the company unit is that it goes to the merits of the question. The American Federation of Labor depends upon what? It depends upon the force, not upon the rightfulness or wrongfulness of the particular problem at hand. That is what the employers did years ago. We denounced him. I will denounce him now for adopting force.

Now, we say it is all right for the American Federation of Labor to adopt force? It is not all right for the employers who are members of the American Federation of Labor to adopt force. It is not all right for either one of those parties, nor is it all right for anybody to resort to force.

We have certain rights. We look to the merits of that situation in order to solve the problems. And it is right or wrong, and not that I can pull a strike, or I can pull a lockout. That is not the solution. But people today do not want to look at those things. They would rather say, "Poor labor is getting a dirty deal." That is not the question. I feel sure none of us want to try to help the sham type of union, but I think we should try to help the company union that is the good type.

I know you have been tolerant with other speakers, Senator Walsh, and I do not want you to have to be tolerant with me.

Thank you very much.

The CHAIRMAN. You have not deteriorated from last year at all, and can still give effective ideas and effective argument.

Mr. COLLINS. Thank you.

The CHAIRMAN. I think I can say to you that the committee and yourself are not far apart as to the preservation of company unions that are free from the domination you have reference to and which are not as objectionable as you have mentioned.

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I do not think there is any disposition here to destroy or prevent a legitimate, independent company union from operating and carrying on its collective bargaining relationships with its own employees.

Mr. COLLINS. But, Senator Walsh, who is to decide what that combination will be? Who is going to be the board? There are a number who run around and go from one group to the other. They are talked into our company union today and tomorrow they are talked into the American Federation of Labor, and the next day they are back into our company union, and what they say is taken as an example that the company union is no good. And that is the class of people who say it is company dominated, and it is believed because they say it is.

The CHAIRMAN. We will have to rely in decisions of all these matters upon public officials, and we hope that the public officials who may be named under this bill will administer the law properly and justly. Of course, it is our duty to see the provisions inserted in this bill will prevent any board, as far as we can foresee, from destroying any representative company union.

Mr. COLLINS. Yes; but I wish you would give some thought to that institutional idea of a company, that it is an institution, and that the members who are in that institution, namely, stockholders and employees, and the employees are really part of that institution, and their relations arise from the set-up that the institution occupies, and that therefore it is a natural set-up and its philosophy sound.

The CHAIRMAN. We all agree with that. You agree, because you have already said so, it is possible for some employers not to recognize that institutional difference should be made, and it is also possible for some company unions to exist who are dominated and controlled by the employers.

Mr. COLLINS. That is why I say Government has not given us enough help in trying to form the right type of company union, to let us draw an entire set of bylaws and recognize them, just as we have a constitution which should be recognized by Congress and not declared unconstitutional.

The CHAIRMAN. Would you be willing to accept a constitution drawn up by the Government giving the members of your employees the right to organize a company union that could not be said to be dominated?

Mr. COLLINS. That is all right, but the thing should arise from within and the Government should be without. That would relieve the Government of all responsibility. The Government is trying to get into this and get into that, and it cannot be done. I mean there should be self-organization in industry to a certain extent.

The CHAIRMAN. Supposing this committee of 11 members desired to ask for her wages or shorter hours and the company proceeded to control 6 of those 11 members; would you not think it proper for the Government officials to step in and punish the employers for acting in that manner?

Mr. COLLINS. If it could be proved.

The CHAIRMAN. And also to hold that a company of that kind was dominated by the employer?

Mr. COLLINS. If it could be proved, yes. And I think that the ordinary delegate should be more disciplined and instructed as to the duties of a delegate. Then when these problems do arrive he

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will accept them on the merits of the situation, and not on the fact that he is going to get some benefit or something out of it.

The CHAIRMAN. But you would want also the same principle to be applied to a trade union. You would want the so-called "trade union" in distinction to the company union, would you not——

Mr. COLLINS (interposing). I am not prepared to say, Senator, to tell you the truth. I am only prepared to say——

The CHAIRMAN (interposing). No; I mean if the representatives of a trade-union organization were subject to the control of the employer, you would want the same justice to be served by the officials of the Federal Government as would be applied in the case of a company union?

Mr. COLLINS. Yes, of course.

The CHAIRMAN. That is all.

Mr. COLLINS. I thank you very much, Senator, and I appreciate very much your giving me the time that you have.

The CHAIRMAN. This gentleman has spoken for all of you?

Mr. COLLINS. Yes, sir, Senator.

The CHAIRMAN. Please give your names to the clerk.

Mr. Emery, what time will be most convenient for you this afternoon?

Mr. EMERY. Whatever is convenient for you, Mr. Chairman.

The CHAIRMAN. I think we had better make it at 2 o'clock, because there are some other witnesses, too, Mr. Emery.

(Whereupon, at 1 p. m., a recess was taken until 2 p. m. of the same day.)

AFTER RECESS

The CHAIRMAN. The committee will come to order. Is there a representative of the Ohio Chamber of Commerce present? If so, please come forward.

STATEMENT OF GEORGE B. CHANDLER, OF COLUMBUS, OHIO, SECRETARY OF THE OHIO CHAMBER OF COMMERCE

The CHAIRMAN. Will you please give your full name?

Mr. CHANDLER. George B. Chandler.

The CHAIRMAN. Where do you reside, Mr. Chandler?

Mr. CHANDLER. Columbus, Ohio.

The CHAIRMAN. Are you appearing before this committee in your personal capacity or in a representative capacity?

Mr. CHANDLER. I am appearing in a representative capacity for the Ohio Chamber of Commerce, of which I am the manager.

The CHAIRMAN. How large a membership has the Ohio Chamber of Commerce?

Mr. CHANDLER. We have 78 local chambers that belong to the chamber, and 4,269 individual corporate and representative members.

The CHAIRMAN. Who instructed you to appear representing your organization?

The CHANDLER. The board of directors of the chamber.

The CHAIRMAN. You may proceed.

Mr. CHANDLER. We are not an employers' organization. In other words we are not an employers' union. We leave the technical ques-

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tions in the labor departments of manufacturers associations and trade groups which are somewhat analogous to unions. We deal with the fundamental economic and fiscal problems, and I am down here this week interested in four measures.

The 30-hour-week bill, the economic-security program, in which we are intensely interested, and up which we entertain strong views; and the holding company bill, which we deem of exceeding importance and upon which we likewise entertain strong views, and also this bill.

The CHAIRMAN. All four measures are very important.

Mr. CHANDLER. The labor-disputes bill only appeals to us, and I hope you will excuse us if I do not possess that technical knowledge of details which some of the laborers' and employers' attorneys would be interested in.

The CHAIRMAN. We appreciate that.

Mr. CHANDLER. We are only interested in certain fundamentals which we believe are repugnant to certain principles which you and I inherited. Our conclusions were arrived at by a careful study of our committee on Federal affairs, followed by unanimous action by our board of directors.

Our first objection to this bill, which I have stated is a matter of principle rather than of detail, is it is a violation of what we deem to be equality before the law.

Section 7 of the bill reads as follows:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

This is a matter to which we give our assent, and is basic in our American system. Then we come to section 8, the language of which is as follows:

> It shall be an unfair labor practice for an employer * * * (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed under section 7.

That is fundamental also and no employer should do it.

However, we are primarily interested in the omission to the effect that it shall not be an unfair labor practice for a union to interfere with, coerce, or restrain employees with respect to the joining of labor unions. We believe that this should go on four-foot, and that there should be equality before the law. It presents the same manifest injustice that the Clayton bill did when it was passed, exempting farmers and labor unions from the antitrust act, and imposing them upon your Massachusetts industries and other groups. That is our first fundamental objection.

The second objection goes just as deep into our American equality. It denies minority rights. Of course, we talk about its being a principle of American government that we shall have the majority rule. That is true in the election of officers, about our Constitution, and our court decisions, and all of our practices are very jealous of the protection of minorities.

Under this bill 51 percent of the employees voting on a question could bargain away the rights of a minority of 49 percent; they could compel 49 percent of them, although there seems to be a pro-

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vision in the law which would prevent it, but in practice it would compel the other 49 percent to join the union or quit.

Those are our objections to certain principles of this bill.

Another objection is administrative, in the centralizing and vesting in the politically appointed board of three men summary power over billions of capital and millions of employees, and it is a plan to unionize America from Washington. It legalizes the closed shop, which is a very much mooted question, has been and always will be. It is an attempt at the regimentation of industry and labor.

It seems to me that this country has had one very striking and unfortunate experience in the field of regimentation, that was when we tried to regiment human conduct by passing the prohibition law, which did not work, because people refused to be regimented.

We had another experiment—I believe when you were not a Member of the Senate at the time when that debate was so acute, but I think Senator Lodge represented Massachusetts at the time—and that was the League of Nations. That was an honest idealistic attempt to regiment the nations of the world. What has been the picture? Japan is now at war practically with China, taking large slices of territory; there is war in South America of several months' duration; they are mobilizing now along the historic western front of Europe. In other words, right or wrong, the nations of the world refuse to be regimented.

This principle will not work, because industry and labor will refuse to be regimented. I think it will produce more conflict than it will heal.

Finally, it is the honest conviction of the Ohio Chamber of Commerce that the passage of this piece of legislation will continue to retard recovery rather than hasten it. Our organization at its last annual meeting passed a series of resolutions under the rather ambitious caption of "An appraisal of the 'new deal.'" We tried to be judicial, and we found nine measures which you have passed here in Washington, administrative or legislative, which we have felt were good, as emergency measures. It may be a mere accident they happen to balance in point of number, but we found nine others which we deemed to be calculated to retard recovery, and one of those is no. 3, tampering with the relaionship between capital and labor, through section 7 (a) of the National Industrial Recovery Act.

Now, Mr. Chairman and gentlemen, really, the proof of the pudding is in the eating. I have some figures here with which you are doubtless familiar, because it is on a bulletin mailed to me Friday afternoon by the American Rolling Mill Co., of Littleton, Ohio, one of our great iron and steel units. This is a bulletin of the National Manufacturers Association, and I hope you will be generous and patient if you have heard these figures before, but comparing the 18 months before the attempted regimentation of industry and labor was made under the N. I. R. A. with the 18 months after the N. I. R. A., labor disputes increased 155 percent.

The CHAIRMAN. Will you state that again?

Mr. CHANDLER. During the 18 months before the inception of the N. I. R. A, which was a mild attempt at regimentation, with the 18 months after the N. I. R. A., there was an increase in the number of labor disputes of 155 percent; in the working days, a loss of 278 per-

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cent, and a cost to employees of 305 percent, and a cost to employers of 305 percent, and a cost to the public of 304 percent, or a total cost of 304 percent.

That is how that honest effort toward regimentation worked out.

I am very fearful, gentlemen, and we are fearful, that if you pass this proposed legislation you will not be passing a healing measure, but you will be passing a measure that will have exactly the same result its predecessor had.

I thank you very much for giving us a hearing before your committee when you are so crowded.

The CHAIRMAN. We appreciate your coming so far for the purpose of giving us the views of your very fine organization.

Is there a representative of the National Association of Furniture Manufactruers present? If so, you will please come forward.

STATEMENT OF A. P. HAAKE, MANAGING DIRECTOR OF THE NATIONAL ASSOCIATION OF FURNITURE MANUFACTURERS

The CHAIRMAN. What is your full name?

Mr. HAAKE. A. P. Haake.

The CHAIRMAN. Where do you live?

Mr. HAAKE. Chicago, Ill.

The CHAIRMAN. In what capacity are you appearing before this committee; in your individual capacity, or representing some organization?

Mr. HAAKE. I am appearing as managing director of the National Association of Furniture Manufacturers.

The CHAIRMAN. Are they under a code?

Mr. HAAKE. Yes, sir.

The CHAIRMAN. Have you any relationship to the code authority?

Mr. HAAKE. Yes, sir.

The CHAIRMAN. What is that?

Mr. HAAKE. I am a member of the code authority and a member of the executive committee.

The CHAIRMAN. How large is this association?

Mr. HAAKE. We have approximately 700 members out of probably 1,800 to 2,000 in the industry, and represent approximately 75 percent to 80 percent of the production in that group. That extends from the Atlantic Ocean to the Pacific Ocean, and takes in the entire country except the southeast, which has its own association known as the Southern Furniture Manufacturers Association, of which the executive officer is Mr. J. T. Ryan.

The CHAIRMAN. Are the employees in the manufacturing establishments of the country organized?

Mr. HAAKE. Very little. They are organized to some extent, if you care to have that information, and I could give you the specific localities in which they are organized.

The CHAIRMAN. Are some of the furniture establishments in my State, particularly the chair manufacturers in this organization?

Mr. HAAKE. Yes; most of your people are, and almost none of them are organized. The organization in our industry is mostly on the Pacific coast.

The CHAIRMAN. How about in Michigan, in Grand Rapids?

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Mr. HAAKE. In Grand Rapids there is some organization, but it has not gone very far as yet. The upholstering industry in most of the cities is organized, but not under the A. F. of L. That has been an outgrowth of the industrial union idea, some of which are designated with the rather loose term of communistic.

The CHAIRMAN. You may proceed with your statement.

Mr. HAAKE. If it can be shown that this bill will bring about desirable results from the standpoint of our economic system as a whole and if it would prove practicable in operation, we wish to support it. On the other hand, we should be doubtful about any measure which might impede progress toward its own objective by setting up ill-will and fostering antagonism or by substituting one kind of economic unbalance for another kind. It is our feeling that the weighing of these various factors and considerations should be left with the members of Congress whom we have duly elected for that purpose, and that Congress should be free from pressure or intimidation by any parties concerned. The furniture manufacturing industry would therefore like to ask some questions about the meaning of the bill and call to attention some dangerous possibilities which we feel are included in its structure, rather than to make any definite recommendations to you.

I think I can fairly state that the furniture industry is in agreement with the first sentence in the declaration of policy which opens this bill, and would like to assist in restoring and maintaining a proper balance of bargaining power. Although admitting that maladjustment has existed in many places, we wish to call attention to the fact that the furniture industry is primarily one of small units and that it is located mainly in the smaller cities and towns.

In many of these communities, particularly where the industry is of long standing, the workers have for years possessed a sort of informal solidarity and the common welfare of employers and workers has been sufficiently obvious so that the workers have maintained in most instances a fair and equitable position as to wages and other conditions. For this reason the workers themselves have, in many instances, declined to accept the distant control of national labor organizations and have felt that funds sent out of their own communities in the form of union dues yielded no comparable return. Consequently, a large part of the body of workers in the furniture industry, as well as the management of the industry, would look with misgiving on any measure which might foster monopoly conditions in labor organizations.

Specifically, we should like to question the principal enunciated in paragraph (a) of section 9, and express doubt whether it would benefit the workers or the country in general. Secondly, we feel that the significance of paragraph (3) in section 8 should be called to attention since it provides the instrument by which the majority representation previously mentioned can be immediately expanded into absolute monopoly or labor dictatorship within any bargaining unit. Thirdly, we believe it would appear if this bill should be further considered that sections 7 and 8, dealing with the rights of employees, should guarantee freedom from intimidation by labor organizers as well as freedom from unfair practice by employers. I will take up these three points in order.

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When a majority is allowed to fix the price for labor and make it binding upon the minority, the principle is the same as the one which has raised such widespread objection to the N. R. A. Even the most staunch advocates of price stabilization among business men are beginning to see that it is impractical as well as undesirable to permit the majority of manufacturers in any industry to dictate the price at which all of the members of the industry shall sell their product. In fact, I have sometimes wondered whether the support, which some labor leaders have given to these price-stabilization schemes in the codes, has not resulted from a realization that they would seem inconsistent if they did not extend such support.

The real answer as to stabilization of the prices of commodities or labor without a train of ill will and the likelihood of eventual collapse, lies in effective leadership rather than force. If a union which operates as a bargaining agency for its group of workers, succeeds in attaining better conditions for those workers, it will attract membership. This always has been and always will be so. In the same manner, if an outstanding concern in any industry publishes reasonable prices and abides by those prices, it is likely to attain a position of leadership. Inasmuch as such leadership depends upon rightness rather than force, it will be a leadership in lowering prices when they need to be lowered and raising them when they need to be raised, rather than an effort to hold the prices firm against all opposition and against an unwarrantable sacrifice in the volume of business. There is no more reason to believe that a labor union, placed in a position to set a monopoly price, will show any more wisdom than any industry during those periods when it has been in a position to establish monopoly price. Gentlemen, the investigations of the Federal Trade Commission and many economists serve to show that monopoly price for either labor or goods is not likely to be administered with sufficient wisdom to benefit the parties directly interested, to say nothing of the country at large.

The result of labor monopoly is evident in the construction industry; almost a national monopoly has been built up town by town, because construction needed in a given locality could not move to another place where the labor supply was better, as the textile industry has tended to do. The strangulation of the construction industry by high wages would be repeated on a national scale, if the courts were to permit the potential results of this bill. Of course, it is not likely that the full potential will be realized, but in such industries or territories as it does occur, just by that degree will the strangling effect of monopoly endanger our national progress.

Collective bargaining is commonly advocated in order to restore the balance of bargaining power between employer and employee. The objective is a worthy one, and we believe deserves further study from this committee and the Congress in general, in order that efforts to establish the balance of bargaining power shall not result in a more dangerous unbalance in another direction. Under this bill, the way is open for a union to establish a closed-shop labor monopoly in any industry or factory merely by gathering a majority vote of the workers. In contrast to the original extreme of a single worker bargaining with a large employer, you would soon have one labor monopoly bargaining with a group of small individual manufactur-

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ers. Therefore, the provisions of this bill seem to us inconsistent with the desirable objective announced in its preamble.

The CHAIRMAN. A small union represented by a majority of the employees could demand as an element of collective bargaining of the employer the closed shop?

Mr. HAAKE. Yes, sir.

The CHAIRMAN. And if the closed shop were refused, they could strike and attempt to force the employer into making an agreement for a closed shop?

Mr. HAAKE. Yes, sir.

The CHAIRMAN. Can they not do that just as well now, without this bill?

Mr. HAAKE. I frankly do not know. I would like to say they could not, of course, but I frankly do not know. I believe that they could not do it quite so well.

The CHAIRMAN. No; they would probably be in a better position because more highly unionized, I think, and they would also have a tribunal to go to.

Mr. HAAKE. Exactly.

The CHAIRMAN. Of course, no tribunal of the Government may force an employer of this law to consent to such a request from a majority of the employees. This bill leaves the discretion to the employer to sign or not to sign an agreement for a closed shop. You know that.

Mr. HAAKE. I know that.

The CHAIRMAN. Do you think the pressure of the matters referred to in the bill would have a tendency to make that demand more general today, and to insist upon it to the extent of using force if necessary?

Mr. HAAKE. That is exactly the point I was making. It seems to me where the employer has the right to sign or not to sign, or the right to choose between a closed shop or an open shop, then the moment he is compelled to bargain with that organization which represents the majority of his employees, we have taken a very effective step toward establishing the closed shop, because in effect that can easily become a closed shop.

The CHAIRMAN. Of course, this bill permits an employer to make an agreement for a closed shop with his company-union employees, if those unions are not dominated; but I observe most of the employers are against the closed shop, whether it is a company union or a labor union.

Mr. HAAKE. That is certainly true in our industry. We cannot prove it one way or the other, but our factories very strongly believe that is what would happen, and we believe we have enough of the labor organizers—and I am speaking now of the less official groups, such as those that operate along the Pacific coast—to be satisfied that the prestige that would lie back of this bill would give them a coercive power over their employers, and that power would be so immensely increased that the manufacturers would be up against a losing game.

The CHAIRMAN. I assume there is only a small percentage of the furniture manufacturers on the Pacific coast. Is that correct?

Mr. HAAKE. Practically between 10 and 15 percent.

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Senator MURRAY. I have heard it claimed that along Portland, and along there, is now manufactured most of the furniture in the United States.

Mr. HAAKE. Yes; they have stopped talking about the weather and talk about furniture now, and they are making more furniture there; it is increasing right along.

A labor monopoly would be far more destructive to small-town industry than any code ever proposed, since the small town always has and probably should pay a smaller differential above the minimum wage than is paid for the same skill of labor in the bigger cities. Unions would try to impose the same rate everywhere and would be pleased rather than disappointed if the result forced industry into the bigger cities, where it could more easily be unionized.

The CHAIRMAN. Have you observed a tendency on the part of industry to move out of the large cities?

Mr. HAAKE. The tendency on the part of the upholstering industry is to move into the smaller cities, and that has been more in evidence in the last few years.

The CHAIRMAN. I have observed it in other industries, aside from merger, with which I am not familiar.

Mr. HAAKE. It has been very much so in our industry, in the last few years.

The CHAIRMAN. I imagine furniture manufacturing is highly competitive?

Mr. HAAKE. Exceedingly so.

The CHAIRMAN. I know in my State at one time when I was practicing law there were at least 20 or 25 chair manufacturers in one community, all small factories competing with each other.

Mr. HAAKE. We are having prepared now the annual experience report, and that report shows that 81 percent of our people lost money in 1934, which will show that it is a very competitive condition.

Now, going further with my statement, the principle of majority representation, which is the standard and relatively satisfactory basis of all our legislatures, is frequently urged as a precedent for a similar basis in labor representation.

We have had that thrown at us a number of times.

However, it must be remembered that the rights of minorities are safeguarded in the Constitution of the United States and every civilized State, and that our legislative representation is, in general, limited to matters dealing with public safety and welfare. It does not extend to dictation of the incomes of individuals employed by private industries; and the courts have frequently invalidated efforts to restrict an individual's right to invest his funds in any legitimate enterprise or to labor at any legitimate occupation. Yet, in many instances, the union organizations have attempted by extra-legal means to restrict the rights of workers to labor where they wish.

The proviso attached to paragraph (a) of section 9 is particularly interesting in connection with the problem of minority rights. Does it say, in effect, that any minority group of employees shall have the right to disagree with the employer but they shall not have the right to agree with him. That seems a rather one-sided statement of the rights of minorities.

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There is a good deal of emphasis in the bill to the effect that there shall be no intimidation or coercion by employers, and we are fully aware the employer has it in his power, if he wishes, to exercise power of intimidation or coercion of the employee.

We are also aware thare are many perfectly natural acts which he performs in his relations with the employees which are not of this coercive or intimidating character, but which can be very easily interpreted or twisted so as to be construed as such.

However, if we are going to have a rule against intimidation or coercion by the employers, it seems to us quite as important and quite as fair also that there should be a denial of intimidation and coercion on the other side. That intimidation and coercion, we have observed in our industry, has sometimes found its way into the factory during work hours.

I have in mind an employer who got himself into difficulties for discharging an employee under the N. R. A., and was accused of doing so because the man was engaged in union activities. The man was engaged in union activities, but he was also taking his time when he should have been at the bench during the day to engage in that activity.

It seems to us, however it may be done, that some way might well be found to at least discourage intimidation and coercion by the employees. Possibly, if under the act recognition were refused to any union whose members employed intimidation or coercion, that might have the desired effect.

The CHAIRMAN. That section which you and others have quoted, subsection 1 of section 8, says:

> It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights granted in section 7.

Briefly, section 7 guarantees the right to engage in collective bargaining.

Now, how can employees interfere or restrain or coerce their employers in the exercise of the rights granted in section 7?

Mr. HAAKE. Because the employee under section 7 theoretically has the right to bargain through representatives of his own choosing. I think it is fairly well established that in many cases employees have gone on strikes, and in other ways acted collectively with the other employees, not because of their own choosing, but because of fear of their lives or property.

In other words, let us assume for the moment I am a labor organizer and I used strong-arm methods on the workers in this plant in one way and another.

The CHAIRMAN. It would be used by a labor union for the purpose of bringing about the exercise of the rights under section 7, while this prohibition is to prevent the employees from enjoying that right of collective bargaining.

I cannot conceive of a labor union trying to interfere with or coerce its fellow employees for the purpose of preventing collective bargaining.

Mr. HAAKE. No; certainly not, but for the purpose of making collective bargaining not representative.

The CHAIRMAN. Yes; that is a possibility.

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Mr. HAAKE. That is the point I have in mind. I know positively, Mr. Chairman, there have been numerous cases in our industry where the men did not dare do anything else for fear of their lives.

The CHAIRMAN. I suppose a majority of the employees, through their representatives, might say, let us have a strike, and do nothing about collective bargaining, but because we do not like this man and do not want to have anything to do with him.

Mr. HAAKE. That is quite conceivable.

The CHAIRMAN. Have you finished?

Mr. HAAKE. Yes, Mr. Chairman; and may I emphasize, it may be a simple or naive thought, but possibly if recognition was denied to any group that used coercion, whether employee or employer, it might have the effect of discouraging it.

I thank you for the privilege of appearing before you, gentlemen.

The CHAIRMAN. Is Mr. Furmer present, representing the Independent Workers League of America?

Mr. WRIGHT. Mr. Chairman, I am here to represent Mr. Furmer in behalf of the Independent Workers League of America.

STATEMENT OF CHRISTOPHER HAYNES WRIGHT, REPRESENTING INDEPENDENT WORKERS' LEAGUE OF AMERICA, UNION CITY, N. J.

The CHAIRMAN. What is your full name, Mr. Wright?

Mr. WRIGHT. Christopher H. Wright.

The CHAIRMAN. Where do you reside?

Mr. WRIGHT. Union City, N. J.

The CHAIRMAN. Are you appearing in your personal capacity or representing an independent organization?

Mr. WRIGHT. I am appearing as president of the Independent Workers League of America.

The CHAIRMAN. Tell us something about the Independent Workers League of America; how many members have they in that organization?

Mr. WRIGHT. The last count that was given me during the latter part of the week was above 150,000.

The CHAIRMAN. Are they employed in a variety of industries, or in one industry?

Mr. WRIGHT. Employed in a variety of industries.

The CHAIRMAN. Have they separate chapters or local organizations?

Mr. WRIGHT. In some instances they have local organizations, and in many instances only independent members.

The CHAIRMAN. How many of these members you mentioned are affiliated with local units or organizations?

Mr. WRIGHT. In company unions?

The CHAIRMAN. No; how many of these workers you spoke of that are connected with your organization have their membership in local units or organizations?

Mr. WRIGHT. Those figures I could not give, because we have only begun to organize since the 18th day of February.

The CHAIRMAN. What is the object of your organization?

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Mr. WRIGHT. The object of our organization is to protect the independent workers.

The CHAIRMAN. You have solicited members all over the country?

Mr. WRIGHT. We are now negotiating for branches in Atlanta, Ga., and in Dallas, Tex., and in Chicago. At present our head office is in Jersey City, N. J.

The CHAIRMAN. How do you get them, through correspondence?

Mr. WRIGHT. Yes; through correspondence.

The CHAIRMAN. What would you do, would you tell them about the organization, set forth its purpose, and ask them to sign an application?

Mr. WRIGHT. That is the idea, exactly.

The CHAIRMAN. Are there any dues?

Mr. WRIGHT. No dues.

The CHAIRMAN. Would you set forth the objective of your organization in your communications to independent workers?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. What would you set forth as the objective?

Mr. WRIGHT. To protect and advance, first of all, the interests of the independent workers, and to bring the scattered units and the scattered individuals into an organization in protection from what we feel a great many laws that are favoring certain classes.

The CHAIRMAN. Is one of your objectives to counteract the activities of national labor organizations to force individual workers into their unions?

Mr. WRIGHT. Unfortunately, our objects are antagonistic to some of the methods and practices of unionism, but primarily our purpose is, first of all, to see what we can do to overcome this preaching of dictatorial relations between employee and employer and to build up, instead, a spirit of cooperative relationship.

The CHAIRMAN. How is your organization financed?

Mr. WRIGHT. It is financed by philanthropic subscriptions from people who are interested in our gospel.

The CHAIRMAN. Have you a constitution and bylaws?

Mr. WRIGHT. We have a statement of our principles, just what we stand for, and what we hold to be our rights. On the question of bylaws we have not laid down any bylaws under which to govern any man's individual relations with his employer. That we leave open for it to be determined by a competent group or association, and we allow them the privilege of forming their own bylaws as they see fit, to govern their individual circumstances.

The CHAIRMAN. Will you submit for the record a copy of your statement or your principle?

Mr. WRIGHT. Surely; with pleasure.

The CHAIRMAN. Have you any trade-union members in your organization?

Mr. WRIGHT. We have a great many members who have come to us and declared their dissatisfaction with their relations to the union and have agreed most emphatically that they endorse our principles and purposes as we set forth in that statement, which I hand you.

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The CHAIRMAN. I judge from the title of this pamphlet, "Open or Closed, Stand Up and Be Counted", that one of your objections is against the closed shop.

Mr. WRIGHT. Most assuredly.

The CHAIRMAN. This statement of principles may be incorporated in the record.

(The same is incorporated in the record at the close of the statement of Mr. Wright.)

The CHAIRMAN. Now you may proceed.

Mr. WRIGHT. For the sake of brevity, I think I can cover my ideas right here in this prepared statement very briefly and without rambling.

Representing the Independent Workers League of America, incorporated under the laws of the State of New Jersey, I bring before you a summary of the views held by American workers. This summary is the result of a wide survey conducted by my six associates and myself over a period of many months and in many sections of the country.

At that point I may digress to say that I was again heartily encouraged by hearing the testimony of the representative of the Sobel people, of which I knew nothing, but which I can say to you is the sentiment I have been getting for the last year, during which time I have devoted my entire time to making a survey of opinions as it is held by the workers.

The CHAIRMAN. Mr. Collins is a very exceptionally bright young man, of almost legalistic mind, a well-informed man. Do you think the workers are possessed of that knowledge of the subject which he displayed?

Mr. WRIGHT. He is only one of several groups of whom I personally know who have expressed themselves to us in the same identical language, and who are this minute worried lest they are going to suffer outside interference with their relations they hold at the present time with their employers.

I may also say we are convinced this entire bill is drawn on the premise that there are a lot of labor disputes, and it is designed to settle disputes, and we say most emphatically that the disputes between the employer and the employee are rare in comparison to the number of workmen and the number of employers for whom they work.

I would say, further, I believe the great majority of disputes are the result of agitation.

The CHAIRMAN. Do you not think another objective of the bill is that the absence of organizations among the large groups of employees is resulting in giving the employers an economic advantage over their employees?

Mr. WRIGHT. It is my observation that the major employers are coming to the conclusion they would rather have their men with the company associations or groups, that they may be brought close together, that they may more reasonably discuss their condition because you take a body of men, each individual acquainted with the subject, each man will believe he is not satisfied with something, which if they sit down around the council table and begin to exchange views and ideas, and discuss it from a reasonable and sensible standpoint they find that by so doing they will come nearer arriving at a fa

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decision; and I think those company associations tend to bring to the worker the fact that his relation to his employer are more serious than just the fact that he is on the pay roll.

The CHAIRMAN. I think that state of mind on the part of the employer has grown and exists more today than ever.

But, I think unfortunately it has been necessary to get into that state of mind through force. I do not mean necessarily strikes, but by legislative agitation and a long period of effort to lead him to realize the human race is advancing. I think, perhaps, that has had more influence in arousing the employers to an understanding of the rights of the employees, and I think a good many other things I have mentioned has tended to enlighten to bring about a more advanced state of mind on the part of the employers.

Mr. WRIGHT. I have that as one of our principle objectives, that we must bring the attention of the employer to the fact that if he does not interest himself in the welfare of his workers, somebody else will, and we are working along that line.

This organization is founded on the fundamental principles of the kind of Americanism that raised this country of ours from a few scattered settlements along the Atlantic coast, impoverished, inconspicuous, and unimportant, to its present proud position of the most prosperous and perhaps the most powerful nation on the earth. It is founded on the kind of Americanism that you, Mr. Chairman, and these gentlemen gathered here, were taught in the schools and colleges in the days of your youth. In those days we proudly boasted of the independence of the sovereign American. When we thought of the American worker, in those days, we thought of an independent worker.

Mr. Chairman, we hold it to be the constitutional right of the American citizen to join a union, if he so desires, and thereby surrender his individual independence for a mess of pottage, provided, of course, that he does not interpret his union membership as giving him the right to resort to intimidation, force, violence, or injury to property to gain his ends. We are unalterably opposed to certain methods and practices of unionism, but, if a worker wishes to identify himself with the kind of Americanism that unionism teaches, that is his privilege. We have no quarrel with the union worker. We believe in his every right to work side by side with the independent worker, so long as he is satisfactory to his employer, but we are opposed to the intolerance of the union worker toward the independent worker. If the union worker had shown the same tolerance toward the independent worker that the latter extends to the former, we would not be here today.

But, we also hold it to be the constitutional right of the independent worker to refuse to join a union if he so desires, and remain at his job if his employer is willing that he should, regardless of the demands of his union fellow workers. Every American worker has this constitutional right to not join a union, and to obtain legitimate employment wherever he may find it, under terms and conditions satisfactory to him and his employer. This right to individual freedom in law-abiding thought and action is alienable, and is the most fundamental right in our economic life. Unionism denies this right. If this statement is contradicted, then I say, let an independ-

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ent worker try to obtain employment in a union, or closed shop. Or, let him try to hold a job he already has and remain independent, if his fellow workers on the same job have become unionized.

Mr. Chairman, the Independent Workers League of America, Inc., are opposed to the passage of the Wagner bill. We are advised by able legal authorities that this bill is unconstitutional because of more than one questionable feature. Those points are best pointed out to you by capable advisers appearing before you. We wish to emphasize only one vital point, namely, majority rule. Now the majority rule is an accepted principle in the every-day affairs of our country. But it is an accepted principle because of the fact that the right to rule by the majority is given only after the will of the majority has been determined by the free expression of the choice and wishes of the individual. Behind the will of the majority is presumed to be the rule of reason.

This bill proposes to make it a law of the land for the majority rule to be imposed upon all of the employees of any industry, and that includes every industry.

Up to this point this bill appears safe and to mean no harm. You may also be safe when a gun is shoved into your ribs on a dark street and told to politely hand over the bank roll. Perhaps nothing may happen to you if you will just do as you are told. You may even be handed back some loose change for car fare.

If this bill becomes the law of the land, a club will be placed in the hands of unionism that will enable it, by means of intimidation, force, and violence, to compel independent workers to go into its ranks or starve. This bill proposes that 51 percent of any group of employees may force their will upon the entire group. Every man and woman of intelligence knows that. If all the injuries to property, if all the injuries to independent workers, regarded and referred to by union men as "scabs" and "rats", if all the murders committed to further the cause that this bill seeks to bolster could be tabulated and shown, those revelations would stagger this country. In short, gentlemen, this bill aims to make it possible for unionism to make the closed shop the rule and the ruling power of American industry. It will establish a minority group as a preferred class, with special privileges before the law.

Mr. Chairman, it is estimated that membership in the unions total from four to five million. By what right under God, and in this land, do you propose to put such power in the hands of this small organized minority?

The crux of our protest is, that this bill proposes and was designed entirely for the purpose of putting into the hands of what is now by far the minority of our wage earners the legal right to go out, force the individual into their ranks that they may enroll a sufficient number to show a majority. The rule of reason is forgotten and brushed aside. Not one word of restraint placed upon the present set-up of unionism. We are fully warranted in judging future activities by the long record of strikes, riots, threats, and sabotage written into the industrial life of this country under the cloak of organized labor. The rights and wishes of the vast majority as represented by the ranks of the independent workers are to be destroyed for the selfish interest or what is an unquestioned minority.

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What protection do you offer the vast unorganized majority of some 45 million independent workers? The Independent Workers' League of America speaks for this vast majority. Not officially as yet, but in the name of justice. We expect the time to come when we will be their official representative, for we are rapidly progressing with their organization. But you can rest assured, gentlemen, that these 45 million independent workers are unalterably opposed to the closed-shop principle which, in effect, will be established by the passage of this bill.

This is the organized minority's second attempt to force the closed-shop principle upon industry and the workers through means of special legislation. Section 7a of the N. R. A. was instigated by this organized minority to gain control of industry and to dictate from the closed-shop standpoint the wages and conditions, and who should and who should not be allowed to work. Organized labor's construction of section 7a has been declared to be incorrect by the courts, and this bill appears to be simply another device to make organized labor's interpretation of section 7a the law of the land.

In conclusion, Mr. Chairman, we consider that this bill will breed class hatred, will be fruitful of labor disturbances and strikes, and will prepare a fertile field for communistic and anarchistic agitators. It will certainly make the closed shop the rule and the ruling power. The organized minority is now asking you to make it possible for it to dominate industry. If you grant this request, the day is not far away when you will be asked to actually confiscate industry and place it under organized labor's control. I thank yoo.

Mr. Chairman, I appreciate very much your courtesy in allowing me this chance to be heard before your committee.

The CHAIRMAN. I have the following telegram from E. C. Alexander, secretary of Tri-City Manufacturers' Association of Moline, Ill., which I desire to have inserted in the record.

(The telegram above referred to is as follows:)

Governing board of Tri-City Manufacturers' Association composing 259 manufacturing plants with annual output of $147,000,000, aggregate pay roll of 20,000 employees reaching $30,000,000 annually located in Moline, Rock Island, East Moline, and Silvis, Ill., and Davenport and Bettendorf, Iowa, respectfully urge your active opposition to Wagner labor relations bill since it proposes to impede permanent economics recovery through imposition of drastic, unfair, un-American, and unconstitutional labor policies which, if made effective by Congress, would be inimical to best interests of employees, employers, and forgotten general public of this area.

The CHAIRMAN. I have the following telegram from a number of business concerns in the city of Chicago Heights, Ill., which I desire to have copied into the record.

(The above referred to telegram is as follows:)

[Telegram]

CHICAGO HEIGHTS, ILL., *March 22, 1935.*

Hon. DAVID I. WALSH, *Senator,*
Senate Office Building, Washington, D. C.:

We, the undersigned executives of industries in Chicago Heights, Ill., believe that the Wagner labor relations bill is intended and will result in forcing all employers to operate under the "closed shop" and employees to join labor unions and tie up the industries in this district in serious labor disputes and strikes. The United States census of manufacturers shows that there were

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2,380 less industries in Illinois in 1933 than in 1931, and 4,593 less than in 1929. The vast majority of these industries today are struggling to meet their pay rolls and keep people at work; however, if Members of Congress force upon industry such unfair and unwarranted legislation as is here proposed it will be the last straw that puts many of these remaining industries over the line into bankruptcy.

Arthur T. Clarage, president Columbia Tool Steel Co.; W. Homer Hartz, president Morden Frog & Crossing Works; Nathan Seifer, president, Diamond Braiding Mills; C. B. Murton, works manager, Inland Steel Co.; J. S. Anderson, General manager, Weber Costello Co.; L. H. Ayer, president, F. Ayer Manufacturing Co.; Charles Fahlstrom, assistant secretary and treasurer American Manganese Steel Co.; J. H. Porter, president Calumet Steel Co.; Walter B. Brown, vice president, Victor Chemical Works; J. L. Hench, vice president, Midwest Forging Co.; W. G. Dudleston, plant manager The Flintkote Co.; J. E. Hawes, president Illinois Shade Cloth Corporation.

The CHAIRMAN. The hearing will now be recessed until tomorrow morning at 10 o'clock.

(Thereupon at 3:10 p. m., the hearing was recessed until 10 a. m., Tuesday, Mar. 26, 1935.)

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NATIONAL LABOR RELATIONS BOARD

TUESDAY, MARCH 26, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met, at 10:30 a. m., in room 318, Senate Office Building, Washington, D. C.

Present: Senators Walsh (chairman), Murphy, Thomas, and Murray.

Also present: Senators Wagner, Tydings, and McCarran.

The CHAIRMAN. The committee will please come to order.

The United States Steel Corporation, I understand, desires to put in its written brief in opposition to the proposed Wagner bill. Will the representative of that company please come forward?

STATEMENT OF RAOUL E. DESVERNINE, NEW YORK CITY, REPRESENTING THE UNITED STATES STEEL CORPORATION AND SUBSIDIARIES

The CHAIRMAN. What is your full name for the record?

Mr. DESVERNINE. Raoul E. Desvernine.

The CHAIRMAN. Where is your residence?

Mr. DESVERNINE. 15 Broad Street, New York City.

The CHAIRMAN. In what capacity are you appearing before this committee?

Mr. DESVERNINE. As counsel for the United States Steel Corporation and its subsidiaries, submitting its statement.

The CHAIRMAN. Are you submitting a brief?

Mr. DESVERNINE. Yes, sir.

(The brief of the United States Steel Corporation is hereto attached, as follows:)

STATEMENT OF UNITED STATES STEEL CORPORATION AND SUBSIDIARIES IN OPPOSITION TO PROPOSED NATIONAL LABOR RELATIONS ACT

To the Committee on Education and Labor of the United States Senate:

The United States Steel Corporation and its subsidiaries appear in opposition to S. 1958 cited as the National Labor Relations Act introduced by Senator Robert Wagner, of New York, February 15 (calendar day, Feb. 21), 1935, and respectfully submit the following facts and arguments in opposition to said bill as the same affects them.

The express purposes of the bill as set forth in the title are primarily "to promote equality of bargaining power between employers and employees", and "to diminish the causes of labor disputes." Before analyzing in detail the provisions of the bill and the problems of their practical application, we wish to explain the relations that exist at present between us and our employees and the means that are already available for bargaining between us and our employees.

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Our policy toward our employees and their right to meet and bargain with us is probably best expressed by the statement which several of our subsidiaries have made as a matter of record to the National Steel Labor Relations Board.[1] That statement is that:

"The company has not refused to meet and collectively bargain with any of its employees or any group of its employees or their representatives, but has at all times done so. The company will receive and negotiate with members of any organization, as such, as representatives of those employees whom they represent, irrespective of their number, and will undertake to adjust their complaints as to wages, discharges, and similar items, but the company does not engage to make any term contracts.

That statement is not merely a statement of what we propose to do but it is a statement of what actually has been our policy. No additional legislation is necessary in the interest of our employees to insure freedom of collective bargaining.

Employee representation plans are operating as a means of facilitating and carrying out collective bargaining in practically all of our plants or districts. We have annexed hereto as "schedule A" a statement showing the number and percentage of employees who have voluntarily voted at elections for the adoption of employee representation plans. We also have attached hereto as "schedule B" a statement showing the number and percentage of employees who have voluntarily voted at the last elections for employee representatives under such plans.

In plants or districts employing normally approximately 129,798 eligible employees, over 83 percent of our employees have voted at elections specifically and affirmatively adopting an employee representation plan as their desired plan and means of exercising their rights of collective bargaining, and at a later period, in these same plants or districts, but then employing 136,761 eligible employees, over 89 percent of the employees have voted for the election of employee representatives under employee representation plans.

All of said elections have been fairly held, so as to indicate the actual desires of the employees participating in such elections. In elections for candidates the practice has uniformly been to have a primary election where the employees could by secret ballot[2] nominate candidates for employee representatives, and after such primary election to hold a final election by secret ballot.[3] This ballot would contain the names of the two or more persons having received the greatest number of votes at the primary elections. The employees are free to choose as their candidates for representative any person except a supervisory or executive official of the company, and their choice is in nowise limited to fellow employees in their plant or industry. The ballots have been prepared by the employees themselves and the elections have been held under their supervision. All elections have been by secret ballot, and at no time have we or our subsidiaries in any way influenced or suggested how or for whom our employees should vote.[4]

Under the circumstances it is submitted that the results of such elections clearly and fairly establish the desires of the employees participating in such elections as to the representatives they wish to represent them and the form of plan or organization to be the basis for such representation.

The employee representation plans established at the plants or districts of our subsidiaries are not mere formalities. The employee representatives under such plans have been actively dealing with the respective managements on behalf of the employees. For an illustration of how such plans have been working, attention is called to the record before the National Steel Labor Relations Board in the *Matter of Carnegie Steel Co.—Duquesne plant*, at page 66, in which there appears the following record as to the effectiveness of that employee representation plan from the end of June 1933 through September 1934: Number of meetings held, 81; number of cases referred to representatives or committees for decision, 127; number of cases affecting wages, 21; number of cases affecting

[1] Illinois Steel Co. and Carnegie Steel Co.
[2] See form of primary ballot set forth in schedule C.
[3] See form of election ballot set forth in schedule D.
[4] See records in following matters before National Steel Labor Relations Board: *In the Matter of Carnegie Steel Co.*, Duquesne plant; *In the Matter of Carnegie Steel Co.*, McDonald plant: *In the Matter of Illinois Steel Co.*, Gary works. It is to be noted that in the hearing regarding the Duquesne plant, Mr. Ogburn, counsel for the Amalgamated Association of Iron, Steel, and Tin Workers of North America, made the following remarks regarding the voting by the employees. The statement appears at p. 151 of the record: "Now, as to whether the company actually seeks to influence the selection of particular candidates is not necessarily a pertinent inquiry from my point of view. In fact, I haven't maintained that the company does do that."

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safety, 21; number of cases affecting working conditions, 50; number of other cases, 35; number of cases settled, 121, or 95.2 percent. At the end of that period 93 cases, or 76.8 percent, had been settled in favor of the employees; 20, or 16.5 percent, had been decided against the employees; and 5, or 4.1 percent, had been compromised. Three, or 2.5 percent, had been withdrawn, and 6, or 4.7 percent, were undisposed of. That record is typical of the activity on behalf of employees of the employee representation plans in effect at our various plants or districts.

There has been comment that these plans are objectionable because we, in the first instance, had something to do with suggesting their form. As long as the plans are voluntarily chosen by the employees and the plans are working effectively and satisfactorily to the employees, it is submitted that how the plans originated is immaterial. However, in order that you may have a complete understanding of the facts we wish to explain the origin of these plans.

Most of the employee representation plans of our employees had been put into effect prior to July 1933. We had realized that if our employees were to be able properly to exercise the rights of collective bargaining specifically guaranteed them by the National Industrial Recovery Act, it would be advisble for them to have some workable plan presented to them which they could use or not, as they saw fit. There are approximately 200,000 employees normally employed by us and our subsidiaries. Employees in the various plants and districts cannot readily get together in mass meetings because of the necessity for the continued operation of plants and the consequent working of employees in shifts. These and other problems seemed to us to make it advisable, in the interests of the employees, to prepare some fair workable form for collective action which they might use. Otherwise, they would probably have been subjected to much unnecessary agitation which would not have been in their own interests and which would have been distinctly harmful to the conduct of the operations of our various plants.

With those thoughts in mind, we drafted what seemed to us a practical means through which our employees could act. We submitted such draft plans to the National Labor Board and to the Compliance Board of the National Recovery Administration so as to receive the benefit of their suggestions; and as a result suggestions for changes were received and many of them were adopted. The net result was an expression from the head of the Compliance Board that there was no criticism of the plans as then amended, and that it was a legal and effective means of collective bargaining. The same opinions were expressed by members and officials of the National Labor Board.[5]

The plans were then printed and circulated among the employees of our various plants and districts so that the employees could have an opportunity for examining the plans and making up their own minds as to whether or not they were satisfactory to them. Amendments have from time to time been made at the suggestion of the employees or the employee representatives themselves. The great majority of plans have shown considerable development in their terms and provisions since the day when they were originally submitted to the employees. This is entirely consistent with our original policy of merely furnishing to our employees a means of facilitating their collective action with the hope that they, if said plans were reasonably satisfactory to a substantial majority of the employees, could, through such plans, work out and develop more in detail effective employees' organizations in practical units which would insure the rights of collective bargaining and would be practically workable from the point of view of our operating structure.

Any proposed legislation purporting to be for the benefit of the employees of the country must necessarily be considered as to its effect on the existing relations already established between employees and their employers. We and our subsidiaries, as previously stated, normally employ approximately 200,000 employees, and any legislation which would adversely affect their employee representation plans should be subject to the most careful scrutiny. It would undoubtedly, through confusion and disorganization of the established means which are working satisfactorily to the employees, not be in the interests of the employees. Furthermore, it could not help but adversely affect our business operations.

We will therefore proceed to an analysis of the bill and attempt to summarize briefly the effects of such bill on us and our subsidiaries and on our relations with our employees.

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[5] Record in *In the Matter of Carnegie Steel Co.*, Duquesne plant, at pp. 103–104.

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I. THE COLLECTIVE-BARGAINING PROVISIONS OF THE BILL

Sections 7, 8, and 9 of the bill embody the provisions purporting to insure to employees the right of collective bargaining. As a matter of fact, they also embody many provisions which appear to be against the interest of the employees as such and also against the interest of many businesses honestly and sincerely bargaining with their employees.

The right of collective bargaining as embodied in section 7 (a) of the National Industrial Recovery Act is set forth in the following terms:

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

It is to be noted that that section guarantees to the employees the right of organization for the purpose of insuring their rights of collective bargaining. The present bill (sec. 7) is, however, subject to a construction which would make it mean that employees have, apart from any collective-bargaining rights for their own interests, a basic and fundamental right to form, join, or assist labor organizations as such irrespective of whether such assistance given labor organizations has any effect on the relations between such employee and his employer. The right to assist labor organizations under this possible interpretation of the bill might, irrespective of any grievances which the employee might have as to his employment, be considered a guaranty or at least legislative approval of the right of the general sympathetic strike to further the interests of labor organizations as such entirely apart from the relationship between the employees and their employers. There is no justification for enacting any legislation which is capable of such possible construction. The rights of an employee to bargain with his employer and to be free to join with other employees in concerted action to improve his conditions are fully recognized by us and our subsidiaries; but legislation directed to strengthening labor organizations as such is class legislation, which has the interest of the employees only remotely, if at all, as an aim.

Section 8 sets forth what purports to be unfair labor practices, but it is too one-sided to be actually in the interests of the employees. In the first place, there is no definition of unfair labor practices generally. It is merely a definition of unfair labor practices for an employer. Section 2, subdivision (2), defines the term "employer" and excludes from such definition any labor organization or anyone acting in the capacity of an officer or agent of such labor organization. The bill, therefore, expressly exempts all labor organizations from any statutory restriction of interfering, coercing, or intimidating employees as to how they shall organize. If the bill had the interests of the employee at heart, it should outlaw intimidation, coercion, and interference of employees in their organizing, regardless of who caused such interference, intimidation, or coercion. If the labor organizations are intending fairly and honestly to further the desires and interests of the employees, they can have no objection to a statutory provision which prevents them from intimidating or coercing employees. Certainly any legislation which purports to be a guaranty of the right of employees to organize in whatever fashion they choose should be directed fundamentally to guaranteeing that right rather than restricting certain persons from interfering with that right. The guaranty should require that all persons or organizations respect the right of the employees which the bill purports to secure.

The limited rights of collective bargaining purported to be guaranteed by the bill, however, are further confused by the definition of the term "employee", contained in section 2, subdivision (3). An employee, by that definition, if he ceases working in consequence of a labor dispute, continues to be classed as an employee until he obtains other regular employment. There is no time limit, and if employees cease working through any dispute, they continue to be classed as employees until they find regular employment, even though the dispute may have been settled for a considerable length of time. Any such definition will prevent an employer from knowing who his employees are and will prevent the employees actually working in the plant from knowing who their fellow employees are and possibly from carrying out the wishes of a majority of those who are actually the employees.

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Subdivision (2) of section 8 makes it an unfair labor practice for an employer to "dominate" the formation of any labor organization. Employee representation plans are undoubtedly labor organizations. Such plans as are now in force at our plants and districts are the outgrowth of our efforts, in cooperation with the National Labor Board and the Compliance Board. to put before our employees plans which might be satisfactory to them. It is possible that such efforts of an employer to assist his employees might be held to be outlawed by this provision even though the employees not only did not object but had actually and affirmatively approved the plan originally worked out by the employer. The trouble with the whole bill is that it is designed to prevent any cooperation between an employer and his employees. It is designed to throw them into controversy and dealings at arms' length instead of setting forth certain basic rights of employees and imposing penalties for violation of those rights of employees.

Subdivision (2) of section 8 also makes it an unfair labor practice for an employer to "contribute financial or other support" to a labor organization. This would prevent us and our subsidiaries from paying any bills or expenses of the operation of any employees' plan, regardless of whether such payments were for the benefit of employees, and even if such payments were made without any restrictions which would hamper the free and fair collective action of the employees.

As a matter of fact, we have paid certain expenses incurred by the employee representation plans at our plants or districts; but there never has been any effort or intention through such payments to influence, control, and restrict or in any way dominate the employee representation plans. Our interest has been solely to avoid controversy and confusion at our plants and to permit our employees to get together with as little difficulty as possible. Incidental expenses, such as printing ballots, printing plans, and printing notices all take some money, and if an employer is subject to a blanket restriction which will prevent him from paying any such amounts it means that employees cannot organize and get together on any substantial scale unless they look to some outside labor organizations for financial support. This provision is a definite legislative attempt to force employees to organize only through outside organizations, to which they must pay dues. It ties in with the clear inference from the provisions heretofore referred to, which show that the interest of the employees are only the secondary element of this bill and the interests of the professional labor organizations first. Such labor organizations are left free from any restrictions under the bill, and any efforts of an employer to cooperate and work with his employees in peace and harmony are so restricted and penalized that an employee will, if he desires to have any collective action with his fellow employees, be forced by this legislative action to join a professional outside labor organization.

Section 9 effectively establishes the "majority rule." This section delegates to the Labor Board created by the bill the power to define the units in which employees should be grouped for collective action and then requires that all employees in such group must abide by the decision of the majority in their collective bargaining with their employer. Section 7 (a) of the National Industrial Recovery Act by its terms guaranteed the right of collective bargaining to all employees and thus to each employee. Each employee was free to join with such employees as he chose and equally free to refrain from joining with any employees that he did not choose to join. There was no attempt to require that any employee, as a condition of his employment, must surrender to some organization or group of employees control over his dealings with his employer. Apart from any constitutional question as to whether such provisions can be valid, it is submitted that it is not in the interests of any employee to take away from him the right to determine with what group or organization of employees he will associate himself. The provisions of the bill are quite different from requiring that all members of an organization abide by the majority vote of the other members of the organization, for when a person joins an organization or voluntarily groups himself with others, there may be inferred some authorization on his part by joining such organization or group to authorize the majority to act for him. Under the bill, however, the employee has no option as to whether or not he will join in such group or organization. The Labor Board sets up the limits of the district, area, or plant, and when the area has been so specified by the board all employees, whether they like the district or not, must abide by the majority vote in that district.

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The section does give to minorities the right of presenting their grievances, but there is no need of any statutory provision to insure that right. Even if there were, there is no reason why the minority forced into an artificial group should not equally with the majority have the power to deal and bargain with their employer. Certainly, there is no reason if the fundamental purpose is to protect the interest of the employees.

II. THE PROPOSED NATIONAL LABOR RELATIONS BOARD AND ITS POWERS UNDER THE BILL

Section 3 provides for the creation of a new Labor Board to be designated as the "National Labor Relations Board."

Section 10 of the bill is entitled "Prevention of unfair labor practices" and empowers the Board to prevent any person from engaging in unfair labor practices affecting commerce. This power granted to the Board is declared by the bill to be exclusive. It is not to be affected by any other means of adjustment or prevention that has been or may be established. The present bill thus attempts to supersede all of the machinery heretofore established under the National Industrial Recovery Act, the codes, etc., for the settlement of labor disputes. It is at variance with the fundamental principle of the N. R. A. of Government-supervised self-regulation of industry and labor. The machinery which has been established for such self-regulation is now to be subordinated to the exclusive control of this new Labor Board.

The exclusive agency of the Board for settling labor disputes is strengthened through the delegation of unreasonable powers. It can file its complaints alleging unfair labor practices. It can hold the hearings on the complaints which it has issued and can amend its complaints even after the taking of testimony and can issue orders requiring anyone to cease or desist from such unfair labor practice found by the Board. The Board is therefore plaintiff, judge, and jury, with power to change the basis of the complaints at any time before final order. Such powers are absolutely unprecedented and are not consistent with fair judicial practice. Furthermore, the Board, in determining what testimony to admit and what to exclude, is not bound by any of the customary rules of evidence. Moreover, its findings of fact are stated to be conclusive if supported by evidence.

Section 12, furthermore, gives the Board broad powers of investigation, so that not only can the Board start proceedings before itself as judge, but it can conduct broad investigations to collect evidence in actions which it, as complainant, is bringing before itself. This further adds to the unreasonable and arbitrary powers granted to this Board.

The bill does, however, provide for the right to have the orders of the Labor Board reviewed by the circuit courts of appeal. Furthermore, in spite of the so-called "exclusive" jurisdiction of the new Labor Board, section 11 invests the districts courts of the United States with jurisdiction to prevent and restrain any unfair labor practice affecting commerce, and authorizes the bringing of proceedings at the request of the Labor Board to restrain unfair labor practices. The effect of sections 10 and 11 is that the bill, in spite of giving exclusive power to one body to settle labor disputes, actually authorizes two bodies to do so. There is nothing to explain this inconsistency.

The arbitrary powers of the Board are protected by the imposition of penalties under section 14. These penalties are imposed not only for wilfully assaulting, resisting, or preventing the performance of duties of the Board, its members, etc., but also for interfering with or impeding the Board or its members, etc. When all of the powers granted to the Board are fully considered—making complaints, holding hearings on such complaints, conducting investigations, etc.—it is difficult to determine what may constitute impeding or interfering with such powers. The exercise of many legal rights in properly protecting the interests of a person brought before the Board might be construed as preventing the most expeditious handling of the complaint brought by the Board and might thus be held to be impeding the action of the Board. The present language of the bill might, therefore, be construed as imposing penalties for the exercise of legal rights. The provisions are entirely too vague for a penal statute.

Dated, New York, March 25, 1935.

Respectfully submitted.

UNITED STATES STEEL CORPORATION AND SUBSIDIARIES.

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SCHEDULE A.—*United States Steel Corporation—Number of employees and votes on employees' representation plans*

Company	Total number eligible	Total vote cast	Percent of total eligible who voted	Vote in favor of plan		Vote against plan		Blank or spoiled ballots
				Number	Percent	Number	Percent	
American Bridge Co.	3,113	2,816	90.4	1,356	48.1	461	16.4	999
American Sheet & Tin Plate Co.	23,918	21,584	90.2	13,706	63.5	6,562	30.4	1,316
American Steel & Wire Co.	18,600	17,309	93.1	12,841	74.2	4,230	24.4	238
Carnegie Natural Gas Co.	332	297	89.5	248	83.5	49	16.5	0
Carnegie Steel Co.	27,302	23,485	86.0	15,328	65.3	6,985	29.7	1,172
Illinois Steel Co.	19,909	15,579	78.2	9,122	58.5	5,800	37.2	651
Michigan Limestone & Chemical Co.	425	393	92.5	196	49.9	197	50.1	0
National Tube Co.	15,347	13,334	86.8	10,148	76.2	2,758	20.7	418
Oliver Iron Mining Co.	4,693	4,368	93.1	3,180	72.8	1,088	24.9	100
Pennsylvania & Lake Erie Dock Co.	59	55	93.2	46	83.6	6	16.4	3
Pittsburgh & Conneaut Dock Co.	189	162	85.7	105	65.0	49	35.0	8
Tennessee Coal, Iron & R. R. Co.	14,814	7,609	51.4	6,580	86.5	1,029	13.5	0
The Lorain Steel Co.	1,097	996	90.8	777	78.0	219	22.0	0
Total	129,798	107,987	83.2	73,633	68.2	29,433	27.3	4,905

SCHEDULE B.—*Number and percentage of employees voting at last elections for employee representatives in the subsidiaries of the United States Steel Corporation*

	Total number eligible	Total vote cast	Total percent voting
American Bridge Co	3,671	3,371	91.80
American Sheet & Tin Plate Co	23,769	21,929	92.26
American Steel & Wire Co	19,173	18,322	95.50
Carnegie Natural Gas Co	366	336	91.81
Carnegie Steel Co	28,496	25,164	88.31
Columbia Steel Co	4,051	2,857	70.50
Illinois Steel Co	23,479	19,913	84.81
Lorain Steel Co	1,032	961	93.00
Oil Well Supply Co	542	465	86.97
Oliver Iron Mining Co	3,742	3,587	95.90
National Tube Co	17,527	16,774	95.70
Tenn. Coal, Iron & R. R. Co	8,663	6,660	76.88
Universal Atlas Cement Co	2,250	1,942	86.30
Grand total	136,761	122,281	89.71

SCHEDULE C. NOMINATION BALLOT FOR EMPLOYEES' REPRESENTATIVES—OVEN DEPARTMENT, DIVISION E–2, MONDAY, JUNE 11, 1934, CLAIRTON WORKS, CARNEGIE STEEL CO.

Directions to voters.—This ballot is issued to qualified voters to nominate two candidates to be voted upon at the election, Friday, June 15, 1934, for electing one representative.

The two qualified candidates receiving the highest number of votes will be entered on the election ballots as nominated candidates to be voted upon at the coming election.

Each qualified voter is entitled to write one name or check number on this ballot.

NOTE.—Write one name or check number only. If you write more, your ballot will be void. Write name or check number of candidate below:

----------1

(Do not sign your name)

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SCHEDULE D. ELECTION BALLOT FOR EMPLOYEES' REPRESENTATIVES—OVEN DEPARTMENT, DIVISION E–2, FRIDAY, JUNE 15, 1934, CLAIRTON WORKS, CARNEGIE STEEL CO.

Directions to voters.—Place cross (X) opposite the name of one nominated candidate whom you wish to serve as representative of this division.
If more than one is voted for, the ballot will be void.

DO NOT VOTE FOR MORE THAN ONE NOMINATED CANDIDATE

Name	Check number	Place X below
John J. Mullen	12571	☐
John Walton	12574	☐

(Do not sign your name)

The CHAIRMAN. I also understand the Bethlehem Steel Co. desires to put in its statement in writing. Will the representative of the Bethlehem Steel Co. please come forward?

STATEMENT OF J. M. LARKIN, VICE PRESIDENT, BETHLEHEM STEEL CO., BETHLEHEM, PA.

The CHAIRMAN. Your full name is J. M. Larkin?
Mr. LARKIN. Yes, sir.
The CHAIRMAN. What is your connection with the Bethlehem Steel Co.?
Mr. LARKIN. Vice President of the Bethlehem Steel Co.
The CHAIRMAN. You desire to submit a written statement in their behalf?
Mr. LARKIN. Yes; on behalf of the Bethlehem Steel Co.
The CHAIRMAN. That may appear in the record.
(The statement of Bethlehem Steel Co. is as follows:)

BETHLEHEM STEEL CO., INC.,
Bethlehem, Pa., March 26, 1935.

DEAR SENATOR WALSH: On behalf of Bethlehem Steel Co., I wish to register opposition to the proposed National Labor Relations Act, Senate bill S. 1958, Seventy-fourth Congress, first session.

I appeared before your committee on April 5, 1934, in opposition to the then proposed Labor Disputes Act, Senate bill S. 2926, Seventy-third Congress, second session, hearings on which were then being held by your committee.

I have considered my prior statement in the light of such proposed National Labor Relations Act, now before your committee, and I wish to reaffirm that statement as applicable to the new bill. I would therefore thank you to record this letter, together with my earlier statement (copy enclosed) as an expression of our opposition to the whole philosophy of such bill.

In order to bring my previous statement up to date, I bring to your attention the facts after satisfactory relationships have continued for another year under the employees' representation plans, which have been in effect in the plants of our company for over 16 years.

During the last year some 800 new major questions having to do with hours, wages, and working conditions have been adjusted under those plans with mutual satisfaction to employees and employer.

The annual elections have just been completed wherein 45,950 employees have chosen 429 spokesmen to represent them in dealing with the management

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for the coming year. In such elections, which have been conducted by the employees themselves, 92.2 percent of the 45,950 workers operating under the employees' representation plans cast their ballots. This virtually unanimous endorsement of the plans is even more significant, when it is considered that 92.2 percent registered their approval of the plans in the face of organized agitation against them from the outside.

In view of the foregoing facts, I am sure your committee will appreciate that it would be a calamity to allow anything to be done through legislation or otherwise that would in any way undermine these plans I commend these considerations to your attention with the added thought that the contemplated legislation is not only unnecessary, but would indeed be most harmful and upsetting to the public welfare.

Sincerely yours,

J. M. LARKIN, *Vice President.*

APRIL 5, 1934.

Hon. DAVID I. WALSH,
Chairman Senate Committee on Education and Labor,
United States Senate Office Building, Washington, D. C.

Mr. Chairman and gentlemen of the committee, I am J. M. Larkin, vice president of Bethlehem Steel Co. I am appearing before your committee in opposition to the Wagner bill because I fear that it would legislate out of existence plans of employee representation which are in effect among the employees of many industries in this country, including employees of the company that I represent, and which I know to be good from the point of view of the employees.

Such employee-representation plans have been in operation among the employees of our company for more than 15 years. They have provided a happy and successful working arrangement which our men and our management have found mutually advantageous and satisfactory during that period, and we are wholly opposed to any legislation which would destroy or adversely affect them.

In order to make clear our specific objection to the bill I shall try to present briefly the facts and the principles which lead us to the conviction that employee-representation plans such as the employees of our company have are the most practical method by which labor relationships may be carried on, not only from the standpoint of employees and employers but also from that of the public welfare, and to the conviction that Congress should be most careful not to pass any laws that might adversely affect such plans.

Our plans were adopted because it was believed that they provide the most effective form of handling labor relationships. They were not adopted, as some critics have charged, as a device to forestall unionism, and this was made clear at their inception.

The purpose of the employee-representation plans is to establish a continuous day-to-day channel of communication between management and men. They aim to set up a method whereby all complaints can be quickly heard and adjusted and all suggestions can be considered on their merits, and whereby the men can elect their representatives without any influence from the management, so that the dealings will be clean-cut and on a sound basis.

The underlying philosophy of the employee-representation plans is that the best interests of labor can be served by having the employee and employer sit down together in a friendly and constructive atmosphere and, with a first-hand practical knowledge of their problems, work out a fair and equitable solution. Therein lies the strength of employee representation as contrasted with other forms of collective bargaining which seek to organize employees and employers into separate camps with drawn battle lines.. This was the condition which existed in industry 30 years ago. It is a condition to which we must not revert.

EARLY STAGES OF REPRESENTATION

This employee-representation idea, of course, is not new. Scores of plans have been in effect for many years, and the criticism of them that has recently developed is due to a large extent to the resistance that the employees themselves have shown to the efforts to organize them which the union leaders have made.

Back in the early post-war years, with their unsettled labor conditions, these plans were already in effect in a number of companies. In that period President Wilson created his Second Industrial Conference which was called upon to study the cause of industrial unrest and to suggest measures for preventing

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it. It is significant that such conference made a report in which it recommended employees' representation plans as a practical method of fair and effective collective bargaining.

It is also significant that in the recent settlement of the threatened automobile strike President Roosevelt expressed the hope that employees and employers might develop an effective form of direct joint participation through some sort of works council. In both cases it was made clear that the Government did not favor any particular union or form of employee representation. As President Roosevelt expressed it—

"The Government's only duty is to secure absolutely an uninfluenced freedom of choice without coercion, restraint, or intimidation from any source."

I believe that that is exactly the atmosphere in which real employee representation plans should operate. My general criticism of the Wagner bill is not so much that it supports unionization as that it will in operation result in enforced unionization for every kind and condition of collective bargaining.

COMPANY DOMINATION

Now, there are several principles with respect to employee representation which are fundamental to its success from any point of view. The first of these is the independence of the representatives. There has been a great deal of dust raised about company domination, and it is assumed by some people that every such plan is dominated by the employer company. That is very far from the truth. On the contrary, it is generally recognized by employers that, if these plans are to be of any value to anyone, they must provide a forum for free and open discussion of all problems affecting labor, and no company which has had the long and satisfactory relationship with its employees that our company has had would think of denying them the fullest freedom of action in this regard.

Business men have some common sense. They know that they cannot deceive their employees and at the same time preserve their loyalty and good will. No experienced management would attempt to establish a thoroughly dominated company union, with representatives picked out by them for the purpose of scenery. Nothing would be accomplished by such a set-up, and business men know it. They know that the representatives with whom they are to deal must truly represent the men. They know that if the plans are to operate effectively they must have the support and confidence of the employees.

In dealing with labor as well as in other relationships, sincerity and honesty of purpose are the only principles that pay in the long run. That may sound rather obvious and old-fashioned, but it is a good rule of successful business operation, which is not going to change.

From their inception 15 years ago, our employee-representation plans have operated on a fair and above-board basis. They have provided to our employees an opportunity for collective bargaining absolutely free from domination or intimidation and a ready means by which their employment problems have been and are solved.

GUARANTEES AGAINST DISCRIMINATION

Our plans expressly provide that no employee representative shall be discriminated against for his activities in representing his constituents. They give the representatives the right to appeal any case to the department of labor of the State in which the particular plant is located, or to the United States Department of labor. I do not see how there can be any guaranty better than that. In fact, I think that there is a danger of our forgetting that in the United States Department of Labor we already have a fair tribunal which should command the respect of the American public.

Our plans further guarantee protection of the men from any discrimination because of creed, race, or union membership. All nominations and elections are conducted entirely by the employees themselves by secret ballot with proper safeguards, including ample notification of the time and place of nominations and elections.

MUTUAL PARTICIPATION IN DISCUSSIONS

Another major principle in our employee-representation plans is that of mutual participation in discussions of all problems affecting the employees and the management. This is vital to the success of the plans. It is the very

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feature which distinguishes them as a method of joint and effective cooperation, as compared with the battle-front method, of settling disputes.

Mutual participation is a two-way street, as much a benefit to the men as it is to the employer. It is an advantage to the men to be able to sit down with an equal number of representatives from the management to discuss face to face on a friendly basis the various problems which arise. If management refuses such participation, it should certainly be criticized for so doing. But management also desires it, because it believes that an employee who is informed of his employer's policies and problems and is treated fairly will be a satisfied and therefore a better worker.

In our plans the employee committees are entirely free to meet by themselves, but as a matter of general practice the quick and effective route of working out the current problems is found to be in the meeting of joint committees consisting of representatives of the employees and the management.

ACTUAL EXPERIENCE IN SETTLEMENT OF CASES

That a wide range of matters come up for consideration from day to day and week to week in indicated by the fact that 7,078 major cases have been decided in the past 15 years under the employees-representation plans in effect at the plants of our company. Of these, 1,265 cases dealt with wages and 1,497 with working conditions. Then we find such other important matters as relief, pensions, sanitation, operating practices, accident prevention, and employee transportation.

That these plans provide for the employees a practical method of bargaining and that the decisions are not dominated by the employer is seen in the record which shows that 4,813 of the 7,078 cases to which I have referred were decided as the employees recommended, and that an additional 817 cases were compromised. Thus almost 80 percent of the cases brought up by the employees were decided in accordance with their recommendations or in a manner satisfactory to them.

COMPENSATION FOR TIME CONSUMED IN PERFORMING DUTIES

The next point on which I wish to comment is the provision in our plans whereby the employee representatives are compensated at their regular rate of pay for the time devoted to performing their duties under the plans. Some critics have stated that if men are paid their wages while they are actually serving on a committee, their views will be necessarily biased. Such a statement is based on the misconception of the whole idea. We have always regarded our plans as an integral part of our organization.

I cannot see any sound reason for discriminating against the employees by requiring that their meetings be held at their expense. As I see it, those who think that the representative should serve at his own or the employees' expense cannot have any particular friendship for labor. Indeed, some formal labor agreements which have governmental sanction definitely stipulate that the employees' representatives shall be permitted to attend to their duties at the employer's expense. Our experience over 15 years has been that elected representatives have performed their duties in a fearless, intelligent manner. Anyone who says that an employee is going to compromise his conscience just because his wages continue while he is attending to committee business has an unjustifiably low opinion of the American worker. I believe that employees generally will subscribe to this view and will resent any legislation that will cause them needless loss of wages.

THE SUCCESS OF SUCH PLANS DEMANDS THEIR PROTECTION

"The proof of the pudding is in the eating." Plans such as ours that have provided 15 years of industrial peace prove themselves—they stand on their own merits. Millions of employees are organized under such plans for collective bargaining agreed upon by the employees and the employers, and I am confident that there cannot be the slightest justification for upsetting them.

In industries where employee representation plans have operated successfully the best of working conditions will be found to exist. In commenting upon the

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spirit with which all parties entered into the negotiations leading to the settlement of the threatened automobile strike, President Roosevelt said:

"It (that is, the settlement) is a complete answer to those critics who have asserted that managers and employees cannot cooperate for the public good without domination by selfish interest."

This, I believe, expresses the philosophy underlying the success of employee representation plans.

It would be a calamity to do anything by legislation or otherwise to undermine these plans in any way. On the contrary, I cannot think of any better contribution to the general welfare of labor and the public than a careful safeguarding and further extension of them.

The employees at our various plants have recently conducted elections under their employee-representation plans. All told, 42,000 employees were eligible to vote. I think that it is very significant that in some of our largest plants more than 90 percent of the employees participated in such elections, and that more than 86 percent of the employees in all our plants participated in them.

I know that as a practical business matter the management of our company has always desired to know the sincere and frank opinions of the men on all subjects related to their employment. Our plans have been amended from time to time when local conditions seemed to make it desirable, and we are concerned with these changes only to the extent that they make the plans more workable and effective. Such amendments and suggestions are brought forward by our men from time to time; legislation is not necessary to accomplish any really desirable changes. We favor everything that will foster the free expression by our employees of their views on labor matters to our management.

NEED FOR LABOR BOARD OVEREMPHASIZED

The National Labor Board has emphasized that it has settled labor disputes involving more than a million persons. That is highly commendable. It does not appear whether that number of employees were directly involved in such cases; but, however that may be, it must be remembered that there are over 23,000,000 workers that have not required such mediation.

The very fact of the existence of such a Board as the National Labor Board has tended to promote agitation on the part of professional strike fomenters. A disgruntled minority will always try to capitalize such a situation, and the public welfare is concerned, if such a Board allows itself to be misdirected into encouraging discord.

I think it unfortunate that so much attention has been paid and that so much emphasis has been put upon the relatively small number of cases where there has been dissatisfaction. These, I think, have obscured the real situation existing in industry. Indeed, it is perhaps surprising that, with all the effort in some quarters toward capitalizing the emergency and creating unrest, more trouble has not developed. It is, of course, natural that where the points of disturbance have been somewhat important unusual attention has been attracted to them. Nevertheless, when we think in terms of national policy, we must not lose sight of the fact that the normal average condition in industry is one of peaceful cooperation between employee and employer.

We are opposed to any bill which would set up a restrictive, militant system in place of methods which have worked successfully in our experience for all concerned over many years. The whole philosophy of this proposed legislation, based as it is upon the fomented dissatisfaction of a small area of our national industrial life, seems to me to be wrong. We feel that further legislation at this time is entirely unnecessary. Industrial relationships do not demand it; section 7 (a) of the Recovery Act is a sufficient guarantee to workers, and it should stand as it is, all interested relying upon existing powers of enforcement as sufficient. We believe that it would be the part of wisdom to change the whole approach to this problem of improving industrial relations, which can readily be done without legislation; and that no one method of collective bargaining should be created by legislative edict to the exclusion of other methods—certainly not until the constructive things that have been done by industry and labor in the application of those other methods shall have been thoroughly examined and weighed and found wanting.

The CHAIRMAN. Is there anyone else who desires to submit a written statement, or a brief, for the record?

Mr. BROWN. I would like to do so, Mr. Chairman.

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STATEMENT OF GROVER C. BROWN, NEW YORK CITY, REPRESENTING AMERICAN IRON & STEEL INSTITUTE

The CHAIRMAN. Will you state your full name for the record?

Mr. BROWN. Grover C. Brown.

The CHAIRMAN. You are appearing here in what capacity?

Mr. BROWN. As the representative of the American Iron & Steel Institute, New York City.

The CHAIRMAN. You desire to file a brief or statement?

Mr. BROWN. I desire to file a statement of the position of a number of representative companies of the steel industry.

The CHAIRMAN. That may be included in the record.

(Said statement is as follows:)

A STATEMENT OF THE STEEL INDUSTRY'S POSITION ON THE WAGNER LABOR RELATIONS ACT

MARCH 25, 1935.

Strong opposition to enactment of the Wagner Labor Relations Act now before Congress on the ground that it would stir up industrial conflict throughout the country and retard business recovery is expressed by representative leaders of the iron and steel industry in a statement issued at the offices of the American Iron & Steel Institute:

"The measure rests upon the false and un-American theory that harmony and cooperation is impossible between employees and employers", says the statement. "More than that, it is designed to prevent any such cooperation. Its enactment would set the stage for a conflict which would injure the relations between employees and employers for all time and seriously retard national recovery.

"One of the most destructive effects of the bill would be to strangle employee representation plans which have been in satisfactory operation in numerous industries for many years and are mutually desired by employees and employers. The bill is a definite legislative attempt to force employees to organize only through outside organizations to which they must pay dues.

"This makes it quite clear that the interests of the employees themselves are a secondary consideration of the bill, the first being that of professional labor organizations.

"Such labor organizations are left free from any restrictions under the bill. They can interfere, coerce, or intimidate empolyees at their will. Quite properly, of course, employers are prohibited from coercion or intimidation, but if the measure had the interests of employees at heart, coercive methods of any sort and from any source would be prohibited.

"The obvious intention of the bill is, through the 'majority rule', to impose a closed shop upon industry and create a monopoly in favor of professional labor unions. The closed shop is un-American, and employees in the steel industry and many other great industries have clearly indicated their rejection of any such principle.

"At the present time, peaceful relations exist in the steel industry between employees and employers as a result of the orderly working in practically all plants of employee representation plans. A recent industry-wide survey showed that from 85 to 90 percent of the more than 400,000 steel workers in the country are standing behind their employee representation plans of collective bargaining.

"By contrast, records made public at the annual American Federation of Labor Convention at San Francisco in October 1934 showed a total paid membership in the Amalgamated Association of Iron, Steel and Tin Workers of only 5,500 steel company employees, or less than 2 percent of the total of more than 400,000.

"The records of employee representation plans in the steel industry reveal that thousands of questions have been settled quietly and in an orderly manner. That the plans operate to the benefit of employees is indicated by the fact that 71 percent of all cases were settled in favor of the workers. As might be expected, more of the questions arising under the employee representation plans had to do with wages than with any other subject.

"In view of this widespread support among employees of employee representation plans and the successful and harmonious operation of these plans, it is easily

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understood why employees in the industry resent any effort to legislate them into professional outside unions in which they have not sought membership voluntarily and which would immediately plunge the industry into industrial controversy.

"The record of the steel industry since the inauguration of the Steel Code not only shows harmonious conditions but it discloses that annual earnings of the employees have increased by approximately $100,000,000 as a result of increased wage rates and added employment. There is nothing in this situation calling for drastic legislation such as is contemplated in the Wagner bill.

"The bill provides that the representatives of a majority of the employees in any unit shall be the exclusive representatives of all the employees in such unit. The steel industry believes that such 'majority rule' plan is unfair to union and nonunion groups alike.

"The industry holds any group of its employees entitled to a fair, equal hearing and that no minority group should be arbitrarily subjected to the will of the majority in matters affecting hours, wages, and conditions of employment. It insists, furthermore, that any individual has a right to make his own bargain with his employer, if he prefers to do so.

"The steel industry fully recognizes the rights of an employee to bargain with his employer and to be free to join with other employees to improve his condition. The steel industry opposes legislation such as the Wagner bill, which would serve not to safeguard the employees' rights of collective bargaining but merely to strengthen professional labor unions and to further project the Government into the field of private labor relations."

AMERICAN IRON AND STEEL INSTITUTE,
New York, N. Y.

The CHAIRMAN. Mr. Poole, you may come forward.

STATEMENT OF E. J. POOLE, VICE PRESIDENT, CARPENTER STEEL CO., READING, PA.

The CHAIRMAN. Will you state your full name for the record, Mr. Poole.

Mr. POOLE. My full name is E. J. Poole.

The CHAIRMAN. What is your connection with the Carpenter Steel Co.?

Mr. POOLE. I am vice president of the Carpenter Steel Co.

The CHAIRMAN. The place of business of the Carpenter Steel Co. is Reading, Pa.?

Mr. POOLE. Yes, sir.

The CHAIRMAN. How many plants have you?

Mr. POOLE. One.

The CHAIRMAN. How many employees?

Mr. POOLE. About 1,150.

The CHAIRMAN. Have you any labor organization of your employees?

Mr. POOLE. Yes, sir.

The CHAIRMAN. What is that called?

Mr. POOLE. Carpenter Steel Co. Employee Representative Plan.

The CHAIRMAN. How many members are in that organization?

Mr. POOLE We do not have any membership list—that is, they do not, it is just the employees of the company.

The CHAIRMAN. It is one of those organizations where there is no membership list and no dues, where there is an annual meeting for the election of representatives to confer with the management?

Mr. POOLE. Yes, sir.

The CHAIRMAN. How many representatives have the employees?

Mr. POOLE. Thirty.

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The CHAIRMAN. How many has the management?

Mr. POOLE. Thirty.

The CHAIRMAN. They both sit together for the purpose of engaging in bargaining?

Mr. POOLE. At times; but most of the meetings are held by the employees, in an individual meeting.

The CHAIRMAN. You may proceed with your statement, Mr. Poole.

Mr. POOLE. Mr. Chairman and gentlemen, members of the committee, I am appearing before you today as a representative of not only the steel trade, but also much of the business interests of the great State of Pennsylvania, inasmuch as I am the president of the Pennsylvania State Chamber of Commerce, numbering more than 2,000 firms and corporations amongst its members, these firms and corporations having many thousands of employees.

May I also say that I have had nearly 50 years of experience in industrial work, 20 of which were as a workman, working under the supervision of others. I started my industrial experience as a laborer at the age of 11, advancing successively to a mechanic, foreman, master mechanic, assistant superintendent, superintendent, general superintendent, and vice president in charge of operations. I am also a director in the company with which I am connected.

That there has been wonderful improvements in working conditions during this period of time none can deny, and it is my opinion that this has been accomplished because men who have been workmen themselves have been growing with the industrial life of our Nation, bringing into management more and more the viewpoint of the workers. It is further my opinion that legislation will retard rather than help this improvement in working conditions, except where such legislation is enacted after careful study by both worker and management, and is so drawn as to keep the chiseler on both sides in line.

The Carpenter Steel Co., with which I have the honor to be connected, is a specialty steel plant where the orders are of small volume and go through many processes. There have been months when we have had more than 5,000 items represented in a tonnage of approximately 1,000 tons. I think that you will agree with me that it would be impossible for anyone in Washington, or even the representatives of any national labor organization, to discuss the many sides of such a problem as well as can the employee representatives and the management of our company.

My experience as a worker and manager has convinced me that Mr. Ernest T. Weir was right when he stated at the hearing last year that—

> The worker today is fully aware of his rights and is giving serious thought and consideration to the improvement of his position, and his relations with his employer, and even were the employer inclined to coerce him, it would not be possible. Let me say further that I believe the employer today is not interested in the coercion of his employees. He wants to be with them on a fair and constructive basis and one that will be of mutual benefit to the employee and to the industry.

Furthermore, I believe that any industry that has had the experience of real "internal" collective bargaining under the employees' representative plan, operated on the honorable basis of full freedom of expression and the sincere consideration of appeals, I am sure has

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no objections to but rather strongly favors legislation which will provide such a policy as a permanent program for industry in the United States. We have only to refer to the accomplishments of the past, particularly in the iron and steel industry, to substantiate that statement.

However, in this proposed legislation as indicated by the Wagner bill (S. 1958) there are many provisions that will hamper, delay, or even prevent the promotion of understanding; the fostering of fraternity; the development of personal interest among the workers and national recovery.

1. The bill proposes a new national labor relations board, subject to politics that may become unfriendly to continued operations, and will create strife and retard recovery, and would further project the Government into the field of private employment relations.

2. The bill imposes the violation of the "majority rule" which means the representatives of the majority of the employees have the exclusive right to bargain with management. If an individual or a minority group is not satisfied with its wages, hours, or working conditions negotiated by the majority, there is no recourse or appeal except in the case of grievances.

3. The national labor relations board could intervene in the elections of representatives. They could call special elections when their favorites were "out" and then refuse to call elections after they were "in."

4. The bill provides that the majority may negotiate a closed-shop agreement with the employer. If such an agreement were negotiated, all the employees would be forced to join the labor organization of the majority or lose their jobs. In plainer words it legalizes closed-shop arrangements, under which 49 percent of the workers could be thrown into the streets unless they joined a labor organization favored by the 51 percent.

5. The bill discriminates in prohibiting coercion of employees by employers and not by labor organizations or fellow employees.

6. It does not limit the right to strike, nor require a favorable vote of employees before a strike is called, nor provide a notice to the employer and a waiting period before executing a strike.

There is something fundamentally wrong with an industry that requires the intervention of any agency not directly interested in the enterprise itself in order to safeguard the welfare of those who are engaged in its operations.

The workers who contribute their labor to a given business, the individuals who invest their savings in the undertaking, and those who direct its operations and policies, must all receive their return from the earnings of the enterprise. It is to their common interest that those earnings should be maintained at the highest level attainable, in order that participation of each may be a maximum in amount.

There is, then, a partnership of interest among the three essential elements of industry which demands cooperative recognition by each. None may selfishly or unjustly view the position of the others without destroying the opportunity for success of all. None may ignore the true interest of the others without defeating the primary purpose of its own participation in the joint undertaking.

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Human instinct is fundamentally selfish, and self-interest has always tempted men in every walk of life to ignore, more or less, their obligations to their fellows when by so doing they seemed to improve their own economic status.

[New York Herald Tribune, Mar. 25, 1935]

A BILL TO CREATE TROUBLE

The Wagner bill might fairly be described as an effort to prolong and make permanent all the worst features of section 7–A of N. I. R. A., without at the same time attempting to meet any of the grave criticisms of that vague and blundering enactment or solve any of the practical problems raised by it. It is fundamentally a political measure, designed to placate the politicians of the American Federation of Labor. It seems inconceivable that an administration or a Congress which cares in the least to see recovery will push it to passage. For a more active creator of trouble—of strikes, lockouts, industrial unrest and business hesitation and fears—it would be difficult to conceive.

The bill can be fairly criticized in many details of careless language and omitted definition. Yet the basic unsoundness of it transcends any possible weakness in specific clauses. That unsoundness consists in the fact that in this extraordinary piece of one-way legislation the effect is to turn control of labor, and thereby of industry, over to the old A. F. of L. unions, with no adequate protection either for minority workers or for the employers.

The bill, in such parts as sections 7 and 8, gives great space to defining the rights of employees. There is not one line of obligation placed upon the employees to obey a contract or respect an arbitration. To the precise contrary, in paragraph (d) of section 12, employees are expressly authorized to defy an arbitration with impunity, if they so desire. Also in section 15 the right to strike under any and all conditions is asserted in the broadest possible terms.

We do not believe that President Roosevelt, after his experience of the last 2 years, really desires to turn over the fortunes of American labor to the tender mercies of the old unions. If the Wagner bill is being seriously considered at the Capitol and has received a measure of support at the White House, the reasons are political and rest upon no solid ground of observation of the past or plan for the future. The bill is in effect simply another friendly gesture toward the A. F. of L., exactly as was section 7–A, and would prolong the doubts and difficulties of that vague and vexed item on the list of N. I. R. A. blunders.

These practical objections are ample to cause the defeat of the bill. In addition, there is the grave question of constitutionality, already raised by the N. R. A. litigation, upon which the Supreme Court has yet to pass. This question the bill attempts to meet by using vague language about "the free flow of commerce." But no attempt has been made to restrict the bill to interstate commerce, let alone define that term with precision. To pass the bill at present would stir endless litigation and work untold hardship and injustice upon countless industries.

By contrast with this un-American and blundering gesture toward the irresponsible labor autocracies stand the highly practical experiments with true labor democracy in the automobile industry. What Mr. Leo Wolman and his associates are there directing may well be writing labor history in America. In any event, there is a true experiment in the field, sincerely conducted by able experts, as contrasted with the purely political gesture of the Wagner bill. If Mr. Roosevelt would simply halt his administration's opposition to the Michigan experiment he would do far more for industrial peace and the cause of labor than he could accomplish by any political bargain struck with the A. F. of L.

The CHAIRMAN. What is the date of that editorial?

Mr. POOLE. The date of this editorial is March 23, 1935.

The CHAIRMAN. You may proceed.

Mr. POOLE (reading):

Intelligent men in industry are now quite generally convinced that in the final analysis it is not to their best interest to disregard their responsibilities

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toward those in their employ; and the demonstrated success in the nature of the many employees' representation plans now in operation has long removed the matter from the experimental field. The average worker, as an individual, for obvious reasons, possesses a lesser degree of reasoning power than does his employer. Because of this fact he is easily prompted to feelings of suspicion and uncertainty with regard to the motives and acts of those with whom he naturally desires to cooperate. He is likewise peculiarly susceptible to the influence of those whose principal aim in life is the fomenting of discontent.

Management in industry realizes that such a situation imposes upon it the duty of securing the complete confidence of its employees through the exercise of frank and scrupulously honest treatment of every right, legal or moral, which the worker possesses, to the end that he may come to appreciate not only his own obligation to his task, but also the economic influences which may operate either to his advantage or detriment.

The present employees' representation is furnishing a satisfactory disposition of the so-called "labor problem", and we prayerfully urge to not allow the further entrance of the negative influences this Wagner labor-disputes bill would encourage.

Thank you, Mr. Chairman, for this opportunity of appearing before your committee.

The CHAIRMAN. The next witness is Mr. W. C. Sutherland. Will you please come forward, Mr. Sutherland?

STATEMENT OF W. C. SUTHERLAND, VICE PRESIDENT, PITTSBURGH STEEL CO., PITTSBURGH, PA.

The CHAIRMAN. Will you give your full name, please, for the record?

Mr. SUTHERLAND. My full name is W. C. Sutherland.

The CHAIRMAN. What is your residence?

Mr. SUTHERLAND. Pittsburgh, Pa.

The CHAIRMAN. What is your official position with the Pittsburgh Steel Co.?

Mr. SUTHERLAND. Vice president of the Pittsburgh Steel Co.

The CHAIRMAN. You appear before this committee representing that company?

Mr. SUTHERLAND. I do.

The CHAIRMAN. How many employees has your company?

Mr. SUTHERLAND. We have 4,000 in one plant and 2,000 in the other.

The CHAIRMAN. Where are your plants located?

Mr. SUTHERLAND. The larger one is at Monessen, Pa., and the other one at Allenport, Pa.

The CHAIRMAN. Are the employees in those plants organized?

Mr. SUTHERLAND. They are not organized into trade unions, but they engage in collective bargaining through the employees' plan.

The CHAIRMAN. A plan similar to that described by the last witness?

Mr. SUTHERLAND. Yes, sir.

The CHAIRMAN. Do you have annual elections in which all employees participate?

Mr. SUTHERLAND. Yes.

The CHAIRMAN. They appoint the number of representatives who meet from time to time to discuss problems relating to their employment and meet with a committee which represents the management?

Mr. SUTHERLAND. They do.

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The CHAIRMAN. Have you a separate organization at each of your plants?

Mr. SUTHERLAND. Yes.

The CHAIRMAN. How many representatives are there on the committee representing the employees?

Mr. SUTHERLAND. In the larger plant there are 32, and in the smaller plant 19.

The CHAIRMAN. How many representatives are there of the management?

Mr. SUTHERLAND. An equal number in each case.

The CHAIRMAN. Do the representatives of the employees meet separately or do they meet jointly with the representatives of the management?

Mr. SUTHERLAND. They meet once in 2 months with the management's representatives, and on the alternate months they meet by themselves. When they meet with the management representatives in cases pertaining to wages and working conditions the management representatives have no votes, but they are there in an advisory capacity.

The CHAIRMAN. Does your company contribute to or financially aid, either directly or indirectly, the representatives of the employees?

Mr. SUTHERLAND. The employees, when they are attending the meetings, are compensated for the time they are there, in an amount to equal to what their hourly earnings are.

The CHAIRMAN. That is the only assistance or aid given by the employers?

Mr. SUTHERLAND. Yes.

The CHAIRMAN. Has this plan worked out satisfactorily?

Mr. SUTHERLAND. It has; very satisfactorily.

The CHAIRMAN. How long has it been in existence?

Mr. SUTHERLAND. Nearly 2 years.

The CHAIRMAN. Have you had any labor troubles?

Mr. SUTHERLAND. Not during that time, whatever.

The CHAIRMAN. Was any effort ever made to form trade unions of your employees?

Mr. SUTHERLAND. Yes; there has been.

The CHAIRMAN. With what success?

Mr. SUTHERLAND. Very poor success. There are a certain few who are enthusiastically promoting the Amalgamated Association of Iron, Steel, and Tin Workers, but they have a very small following.

The CHAIRMAN. You may proceed with your statement.

Mr. SUTHERLAND. Mr. Chairman, members of the committee, and gentlemen, my experience in the steel industry covers a period of 34 years, during which time I have worked in nearly every branch of the industry and have, during most of the time, had direct supervision over large numbers of men.

My first experience was in a mill where all the skilled steel workers were members of a union. It was at this time a local organization which had formerly been connected with a national union but on account of having been dissatisfied with the rulings of the national organization, had severed all affiliations with that institution, and functioned absolutely independently as an organization through

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which there was a direct contact between employer and employees, and all matters concerning either of these groups were always negotiated through this collective bargaining agency. Harmony always prevailed, which can be attributed to the fact that the negotiations were always between groups with a common interest and no outsiders or noninterested persons ever participated in any way. This arrangement of 34 years ago was at that time, what the present employees' representation plan, in successful operations in the steel plants today is—a successful means for collective bargaining.

My experience has always found a decidedly friendly and cooperative attitude between the men and the management of those engaged in the steel industry, and I am sure that that condition would prevail in all cases today were it not for the fact that disinterested persons have set out to establish the fact that because one person is an employer and another an employee, they must for that reason be enemies and that legislation must be enacted to provide a means of settling disputes which should never arise and would never arise if the third or disinterested party was not legislated into something where his interests were only of a selfish kind.

When the National Industrial Recovery Act was about to become a law the employees at the various plants of the Pittsburgh Steel Co. had nominations and elections by secret ballot to choose representatives from among their group to be their organization and means of contact with the management for the discussion and adjustment of such matters concerning working conditions, wages, and terms of employment as might arise.

The plan followed in this selection of representatives was the employees' representation plan of the Bethlehem Steel Co. which had been in successful operation for about 15 years.

The result of the elections showed that over 80 percent of the employees participated in the voting, which condition was repeated at the end of the first year, with conspicuous interest being shown by the employees in the election of their representatives.

The plan has been in successful operation for nearly 2 years, and during that time the relations between the management and the representatives have been close, friendly, and harmonious, with a clear understanding on all decisions and the reasons for the same.

The management's door has always been and still is open to receive any employees who have anything to say for themselves or their fellow workmen, and they do come in in groups and individually, and are always given a courteous hearing and an honest answer, and reasonable requests where conditions permit are granted or adjusted. Some requests have been made which the management could not in fairness grant, and the refusal in these cases, when thoroughly explained, has always been accepted in the spirit in which the decision was made.

Anything which would tend to interfere with the friendly and cooperative arrangement now in effect at the plants of the Pittsburgh Steel Co. as their means of collective bargaining between employer and employees would be detrimental to the harmony which exists, and for that reason I am opposed to the passage of the revised Wagner bill, S. 1958, the object of which is claimed, is to promote equality of bargaining power between employers and employees, to diminish

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the cause of labor disputes, to create a National Labor Relations Board, and for other causes, but which I think will lead to more disputes by establishing a bearer between employer and employee, interfere with the progress of industry, and retard recovery.

The revised Wagner bill sponsors majority rule and legalizes the closed shop, which would be grossly unfair to the minority group of employees should the majority group in any steel plant or similar industry elect to have a closed shop, as the minority group would be compelled to either join the union and pay dues or be forced out of employment

The revised Wagner bill is urged by its advocates as a measure to promote industrial peace, but the practical results of its passage would be to set the stage for conflict which would retard national recovery and injure employers and employees, as well as the public.

The bill specifying certain acts to be unfair labor practices shows it is biased in favor of professional labor unions. It is designed only to further the advancement of these organizations and impose the closed shop, as is evidenced by the provision that an employer shall not "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." No such restraint is placed upon fellow employees or labor representatives.

The provision of the bill which forbids an employer making contributions toward the operating expenses of the representation plan of his employees is a conspicuous contrast to the absence of restraint upon the amount of dues to be collected by the union-labor organizations or upon the use of these funds.

I am firmly convinced that the foremost desire of labor in the steel industry today is for an opportunity for regular and steady work, and any legislation the influence of which will cause a contrary condition will not be pleasing or beneficial to that large group of people who are most anxious to see the last traces of the industrial depression disappear, and for these reasons I protest against the passage of the revised Wagner bill, S. 1958, as it will be more destructive than constructive in developing and maintaining cooperation and goodwill between employers and employees, which is indeed essential for the welfare of the individual, the people at large, and the prosperity of the Nation.

The CHAIRMAN. How many members of the management of steel-industry employers are in the room? I would like you all to stand up.

(Said representatives at this point arose, as requested.)

The CHAIRMAN. Do you gentlemen all understand that there is nothing in this bill requiring your employees to organize, first of all? And, secondly, there is nothing in this bill that prevents your employees from forming a company union.

Do you understand that, Mr. Sutherland?

Mr. SUTHERLAND. Yes.

The CHAIRMAN. Then I take it your objection is largely based upon a belief of fear that this bill indirectly tends to promote and encourage trade-union organizations rather than company-union organizations?

Mr. SUTHERLAND. It does.

The CHAIRMAN. And that you would be harassed by efforts to organize trade unions in substitution for company unions?

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Mr. SUTHERLAND. Ours is not a company union; it is simply a means for them to deal with their employers, but they have no signed membership.

The CHAIRMAN. Of course, there is no objection to that, and I think this committee is disposed to protect in every possible way the existence of such unions or organizations as you have indicated.

I think I can appreciate the fear that you have, or the fear that exists at the present time. There is nothing, without this law at all, to prevent any representatives of any labor organization working among your men to induce them to form a trade union. That is true, is it not?

Mr. SUTHERLAND. Yes, sir.

The CHAIRMAN. But you think enactment of legislation of this kind will tend to encourage that movement?

Mr. SUTHERLAND. We pay no attention to whether a man belongs to a union or not. That does not enter into the conditions of our employment.

The CHAIRMAN. Except for this feeling you have of agitation that may come from existing trade-union organizations, I do not see how there will be any change in relationship you have now with your employees.

Mr. SUTHERLAND. The main thing we see is the provision where the proposed labor relations board would be permitted to call an election at any time they might choose, and if the request should be made they could repeatedly call these elections, and do these things over and over.

We find the attitude of the men most pronounced in their desire to have steady work, and many requests have come to us where they say we will drop all of these if we can have steady work.

The CHAIRMAN. Do you think the minority of your employees could exert influence or opposition repeatedly on the Labor Board to hold elections which would be harassing and embarrassing to your organization?

Mr. SUTHERLAND. Yes.

Senator THOMAS. In your informal organization how does anyone of your employees become articulate?

Mr. SUTHERLAND. Through their representatives.

Senator THOMAS. How do their representatives express themselves?

Mr. SUTHERLAND. To the management.

Senator THOMAS. How are the representatives chosen?

Mr. SUTHERLAND. By secret ballot.

Senator THOMAS. Under what auspices?

Mr. SUTHERLAND. Under the auspices of their own group, handled entirely by employees, and they nominate and elect by secret ballot.

Senator THOMAS. Some one of the employees causes a meeting?

Mr. SUTHERLAND. The general chairman of the rules committee.

Senator THOMAS. Within their own organization?

Mr. SUTHERLAND. It is their own organization, but there is no membership in the organization, all of the employees being entitled to participate.

Senator THOMAS. It exists all of the time, doesn't it?

Mr. SUTHERLAND. Yes.

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Senator THOMAS. In case the chairman wants to meet his organization, which is not an organization in the ordinary sense, what do the employers say about that?

Mr. SUTHERLAND. They give them permission to meet whenever they want to.

Senator THOMAS. There is, then, cooperation between the employer and the employee in the function of the employees' organization?

Mr. SUTHERLAND. Yes.

The CHAIRMAN. Of course, the primary purpose of this proposed legislation is to make it possible for the employees in any industry to meet independent of the management, to hold an election independent of the management, to select representatives independent of the management, and to permit and to force the employers in good faith to sit in and engage in collective bargaining with the representatives of the employees; and I understand you are now doing all of that?

Mr. SUTHERLAND. Oh, yes.

The CHAIRMAN. Have you anything further you wish to add, Mr. Sutherland?

Mr. SUTHERLAND. No; Mr. Chairman, that is all I have to say.

The CHAIRMAN. The next witness is Mr. Traer. Will you come forward, Mr. Traer?

STATEMENT OF CHARLES S. TRAER, CHICAGO, ILL., VICE PRESIDENT ACME STEEL CO.

The CHAIRMAN. Will you give your full name for the record, Mr. Traer?

Mr. TRAER. Charles S. Traer.

The CHAIRMAN. You are vice president of the Acme Steel Co. of Chicago, Ill.?

Mr. TRAER. I am.

The CHAIRMAN. Are you here in your official capacity representing that company?

Mr. TRAER. I am.

The CHAIRMAN. How many employees and how many plants have your company?

Mr. TRAER. We have about 1,850 employees in 2 plants.

The CHAIRMAN. Where are they located?

Mr. TRAER. One at Riverdale, just outside of the city limits of Chicago, and the other in the city of Chicago.

The CHAIRMAN. Have you any organization of your employees?

Mr. TRAER. We have at the Riverdale plant an employee representation plan.

The CHAIRMAN. At the other plant there is no organization?

Mr. TRAER. No; there is none.

The CHAIRMAN. There is nothing in this bill to prevent that you know of?

Mr. TRAER. Absolutely.

The CHAIRMAN. How many employees did you say you had in each plant?

Mr. TRAER. We have about 1,500 at Riverdale and about 350 at Archer Avenue.

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The CHAIRMAN. What is the nature of the organization at the Riverdale plant?

Mr. TRAER. It is an employee representation plan.

The CHAIRMAN. Similar to that described by the last witness?

Mr. TRAER. It is.

The CHAIRMAN. You may proceed, Mr. Traer.

Mr. TRAER. I have had charge of the Riverdale plant since its inception early in 1919. Since that time it has grown from a very small plant employing some 100 men with a capacity of 50,000 tons per year, to its present size of 1,500 men and a capacity of close to half a million tons per year. While we are relatively a very small steel company, we do occupy a more or less important niche in the hot- and cold-rolled strip steel field.

In all these 16 years of growth, the relations between our employees and the management have been extremely harmonious and pleasant. We have worked on the basis of associates in a joint enterprise rather than in the outmoded relation of master and servant. This is evidenced by the fact that after 5 bitter years of depression, some 25 percent of our employees are still stockholders in the Acme Steel Co. We have always prided ourselves on our high wage scale, not only in comparison with other industries in our particular neighborhood, but with the Calumet steel district and the steel industry as a whole.

The CHAIRMAN. What is the average wage scale?

Mr. TRAER. I am just coming to that.

During January and February of this year our hourly paid employees, including common labor, averaged 73 cents per hour, which figure, according to the Steel Code Authority statistics, is well above any district in the country.

The CHAIRMAN. Is the wage scale the same in that plant that is not organized as in the plant that is organized–

Mr. TRAER. It is; where we have equivalent jobs or positions.

This brings me to our general protest against the Wagner labor-disputes bill, which to us seems to be predicated upon the fact that the interests of employee and employer must be antagonistic rather than mutual. I do not think that Judge Nields' conclusion from the evidence in the *Weirton case* could possibly be improved upon. He stated:

> It is said this relation involves the problem of the economic balance of the power of labor against the power of capital. The theory of a balance of power or of balancing opposing powers is based upon the assumption of an inevitable and necessary diversity of interest. This is the traditional Old World theory. It is not the twentieth century American theory of that relation as dependent upon mutual interest, understanding, and good will.

Experience shows that when collective bargaining is controlled by professional unions there is no possibility of using common sense to arrive at an equilibrium between rate of wages and economic conditions. Regardless of any other factor or condition, organized labor must at all costs maintain maximum rates of pay, and usually a strike is the method of coercion selected to maintain such rates; to the detriment of employee, employer, and the public at large. The perpetuation of organized-labor leaders in office requires that they advocate a maximum wage scale even though they may be convinced

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themselves that it may be economically unsound. I need only cite the excessive rates demanded by the building-trades unions which are undoubtedly a very vital factor in the lag in the construction industry. What possible good does it do a bricklayer or a carpenter to demand an exceedingly high daily wage when his yearly income, which, after all, is the real thing that counts, is either pitifully small or entirely absent. We have recently had occasion to hire quite a few men, and a large portion of the gang at our gate of a morning have been union building mechanics clamoring to go to work at even our lowest rate of pay.

Our second more or less general objection to the Wagner bill is that to us it seems intent on either destroying or greatly crippling employee-representation plans. Inasmuch as our particular situation is somewhat different from other steel companies who have appeared before this committee, I would like to briefly outline the inauguration of our employee-representation plan and its subsequent complete vindication by the Steel Labor Relations Board. Our plan was not only drawn by the employees themselves, but it was accepted by a healthy majority in an out-and-out "yes" or "no" vote by secret ballot.

The CHAIRMAN. You say the Labor Board has approved your organization?

Mr. TRAER. There was a petition filed to hold the second Government-supervised election that was denied.

The CHAIRMAN. Did you have a petition for a governmental election?

Mr. TRAER. We did not.

The CHAIRMAN. Why was one held?

Mr. TRAER. There was not.

The CHAIRMAN. But the election the men themselves held was approved, and the petition for the second election was disapproved?

Mr. TRAER. That is correct.

The CHAIRMAN. You may proceed.

Mr. TRAER. Furthermore, the referendum, in which 97 percent of the eligible voters cast their ballot, was conducted by the employees themselves. Late in September 1933 two organizers from the Pittsburgh headquarters of the A. A. of I. S. and T. W. appeared in our immediate neighborhood and started to hold mass meetings, with the object in view of unionizing our Riverdale plant. By a campaign of misrepresentation and unfulfillable promises they were able to organize a local lodge among a small group of chronic malcontents that can easily be found in any fairly large group of men. With this as a nucleus, they started on a real program of intimidation and coercion, with the idea in mind of forcing our employees to join the union, whether they cared to or not. Our company absolutely ignored this organizing activity; we laid off no men, we took no position whatsoever in the matter, and, so to speak, we let nature take its course.

After several months a very definite sentiment developed in our plant for an employee representation plan among a large number of our employees who thoroughly dislike and distrust organized labor. Many of these employees had been former union men and had had bitter experience with the methods and procedure of professional

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unionism. Almost every company in the steel industry at that time had employee representation plans in effect, and early in January 1934 it came to my attention that our employees would like to inaugurate a plan in the Riverdale plant. We happened to have an organization in the plant known as the "Goodfellowship Club." This is an organization of our employees for the purpose of aiding the employees in time of sickness, death, or when they are in need of financial assistance. It had been in existence for at least 10 years and is run solely by the employees, for the employees, and the company has nothing whatever to do with the administration of its affairs. While membership is in no way compulsory, it is of interest to note that all but one of our employees were members of the club. Its affairs are governed by a president, vice president, secretary, treasurer, and four additional trustees, who are chosen from among the membership by secret ballot.

I called the officers and trustees of the club together, all of whom were hourly paid men and not foremen, and explained to them that there was apparently considerable sentiment in the plant for collective bargaining; that the men could bargain individually as they had been doing in the past or they could bargain collectively, and they could choose their representatives for such purpose without any restraint, coercion, or interference from the management. I explained that a representation plan had been suggested as a satisfactory vehicle for collective bargaining, but it was believed by the company that if any such plan were drawn up it should be prepared by the employees themselves and put up to the men for a "yes" or "no" vote to accept or reject it.

It being obviously impossible to consult every man in the plant, I told the officers and trustees that the management considered them to be the group most representatives of the entire employee body. The then officers and trustees of the club had been elected the preceding month at an election in which a large majority of the employees had voted. These men had been voted into positions of considerable financial responsibility and trust, and the management assumed that they commanded the confidence and respect of the employee body. I impressed upon them the fact that I was not asking them to accept a plan on behalf of the employees but merely to draw up what they considered a workable plan for submission to the entire body of employees for acceptance or rejection on a secret ballot. Not wishing to have anything to do with the holding of the referendum election on the adoption of the plan, I requested the officers and trustees to serve as election judges and clerks.

To aid in the formulation of a satisfactory plan I supplied them with a number of model plans, some of which were in use in other industries. From the plans so submitted as working models they evolved the plan now in operation. Some of the ideas contained in the model plans were rejected and others, which they felt suitable to their needs, were included, and they further added some ideas of their very own.

When the plan had been finally formulated, it was printed and put in the hands of all employees about a week to 10 days prior to the referendum election so that they would have an opportunity to study it. The referendum on the plan and the nominations for first representatives were held on February 8, 1934. The results of the vote

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were as follows: 516 yes, 306 no, 11 voided ballots, and 49 blank ballots. The votes were counted and the results certified to the management by the officers and trustees of the club. One week later or on February 15, 1934, the same men acted as election judges and clerks at the election in which the representatives were elected from these nominated on February 8, and again the results were certified to the management. Since that time, to my mind, the plan has functioned admirably in the settlement of such differences as have arisen between the employee body and the company. You will hear the men's viewpoint from certain of our employees who have requested that they be heard by this committee.

Notwithstanding the fairness with which our plan was drawn and adopted, our local A. A. lodge attacked it by filing a petition with the Steel Labor Relations Board to hold a second Government-supervised election, at which our employees would ostensibly be permitted to choose their representatives for collective bargaining. A very full and complete hearing on this petition was held by the Steel Labor Board in Chicago during October and November 1934, and early in January of this year the following decision was handed down:

Upon the foregoing facts, and upon the entire record now before it, the board concludes that it is not in the public interest at this time to hold another election of employees of the Acme Steel Co.'s plant at Riverdale, Chicago, Ill., and such election is not therefore ordered.

I hesitate to take any more of this committee's valuable time, but we have several specific objections to the Wagner bill in addition to the aforesaid general ones. Paragraph 1, section 8, prohibits the employer from interfering with, restraining, or coercing employees in the exercise of rights guaranteed in section 7, but no such prohibition is extended to organized labor. If any bill is to be recommended by the committee, this paragraph should certainly be amended so that it will be an unfair practice for anyone to interfere with, restrain, coerce, and so forth. It is a well-known fact that principal interference and coercion is not from employers but from outside organizations, who will use almost any method to obtain members. Whether such methods have the approval and sanction of the labor leaders in Washington is beside the point; I personally know they are used by professional organizers in the field.

Paragraph 3, section 8, seems to us to be a plain attempt to force the closed shop on industry. It is unthinkable that a bare 51 percent of the men in our plant could be permitted to force the other 49 percent to pay tribute to a labor union in order to hold their jobs. The prohibition law should certainly have taught us that it takes far more than a bare majority to support any legislation; in fact, approval must be almost unanimous.

The CHAIRMAN. This bill, as you have indicated, provides that when a majority of the employees through their representatives petition their employer for a closed shop, the employer may sign an agreement that that industry will become a closed-shop industry. Of course, that condition can exist today without this law, and I assume you and the other employers who have appeared before us object to this, largely on the ground that the statement of that right in a law is an inducement to a majority of the employees to force the closed shop by striking in the event the employer refuses.

Mr. TRAER. Yes, sir.

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The CHAIRMAN. Of course, the right exists today just as much as it would under a statutory law, if the employer sees fit to do it.

Mr. TRAER. I understand that.

The CHAIRMAN. I have observed, from those employers who have been before the committee who have organizations similar to yours, that they have no desire to have a closed shop.

Mr. TRAER. We do not.

The CHAIRMAN. Even if your organizaion voted by an overwhelming vote to petition you for a closed shop, requiring that no one would be employed except those who are members of the existing organization, you would refuse?

Mr. TRAER. That is correct.

The CHAIRMAN. I understand that is the position of the other members of the steel industry who are in the room. So your objection to this provision of this bill is that it is a statement of a right, which would be construed to give justification for a strike in the event the employer refuses to maintain a closed shop?

Mr. TRAER. That is correct, I believe, Mr. Chairman.

Finally, the provision in paragraph C, section 10, that "in any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling" seems to be particularly vicious. This can be construed to mean that the Board could act upon hearsay evidence, affidavits, unsubstantiated statements, rumors, gossip, and so forth, and call them evidence on which findings of fact could be made. Such a procedure would violate every concept of fairness and justice.

The CHAIRMAN. The committee thanks you for your statement, Mr. Traer.

Senator MURPHY. If I understand correctly, you did have one election there that was supervised by the Labor Board?

Mr. TRAER. No, sir; there was a petition for an election that was denied.

Senator MURPHY. By whom?

Mr. TRAER. By the Steel Labor Relations Board.

The CHAIRMAN. I understand now there are present in the room groups of employees representing various branches of the steel industry.

The first group I will call forward are those who are employed by the Republic Steel Corporation. Will you gentlemen come forward?

Mr. Mark Murphy is chairman of the Youngstown district; Mr. James Moore is chairman of the general body, Cleveland district; and Mr. E. J. Mulligan is chairman of the general body, Warren district. Will two of you gentlemen be seated here, and the other we will hear at this time?

STATEMENT OF MARK MURPHY, CHAIRMAN GENERAL BODY OF EMPLOYEES, YOUNGSTOWN DISTRICT, REPUBLIC STEEL CORPORATION

The CHAIRMAN. What is your full name?

Mr. MURPHY. Mark Murphy.

The CHAIRMAN. You are employed by whom?

Mr. MURPHY. The Republic Steel Corporation.

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The CHAIRMAN. In what plant of the Republic Steel Corporation?
Mr. MURPHY. The Bessemer plant in Youngstown, Ohio.
The CHAIRMAN. What is your occupation in this plant?
Mr. MURPHY. Bloom-mill engineer.
The CHAIRMAN. How many employees are there in this plant?
Mr. MURPHY. In the Youngstown district I would say there were approximately about 6,000 men.
The CHAIRMAN. How many in the particular plant in which you are employed?
Mr. MURPHY. I would say about half of that number.
The CHAIRMAN. That is about 3,000?
Mr. MURPHY. Yes.
The CHAIRMAN. Have you an organization of the employees in that plant?
Mr. MURPHY. Yes, sir.
The CHAIRMAN. Have you any official relationship to that organization?
Mr. MURPHY. I don't think I quite understand you.
The CHAIRMAN. Do you hold any position in that labor organization of the employees?
Mr. MURPHY. I am general chairman of the employees' representative plan.
The CHAIRMAN. You appear now as general chairman of the employees' representation plan in that plant of the Republic Steel Co.?
Mr. MURPHY. Yes, sir.
The CHAIRMAN. How many other representatives are there other than yourself in that plant?
Mr. MURPHY. Thirty in the district.
The CHAIRMAN. Thirty in the whole district?
Mr. MURPHY. Yes, sir.
The CHAIRMAN. And they represent how many different plants?
Mr. MURPHY. Two.
The CHAIRMAN. How far apart are the plants located?
Mr. MURPHY. I would say about a mile and a half.
The CHAIRMAN. So that you have more or less a common interest?
Mr. MURPHY. Yes; sir; we work in common as one body.
The CHAIRMAN. Do the plants produce the same products?
Mr. MURPHY. Practically so.
The CHAIRMAN. Do the employees vote together in both plants, or do they vote separately, the employees of each plant?
Mr. MURPHY. We vote in common.
The CHAIRMAN. When did you have your last election?
Mr. MURPHY. June of last year.
The CHAIRMAN. When did you have one before that?
Mr. MURPHY. June of the preceding year.
The CHAIRMAN. And before that?
Mr. MURPHY. We had none.
The CHAIRMAN. So you have been in existence for 2 years?
Mr. MURPHY. Exactly.
The CHAIRMAN. Have you been chairman both years?
Mr. MURPHY. Yes, sir.

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The CHAIRMAN. When you organized 2 years ago did you adopt a constitution and bylaws?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. How was that brought about?

Mr. MURPHY. A meeting of the men was convened and they named myself temporary chairman.

The CHAIRMAN. This, I suppose, was done aside from a ballot in the very first instance. You did not have a ballot in the first instance, when you met to form the organization, but it was a mass meeting of the employees?

Mr. MURPHY. I would term it such; yes. In that body there were about 58 men, I think, from the district.

The CHAIRMAN. That many came together for this purpose?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. How were you selected?

Mr. MURPHY. I don't know exactly how the selection was made.

The CHAIRMAN. In any event, 58 of you met together and you were made general chairman?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. You proceeded then to formulate a constitution and bylaws?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. Were those submitted to all of the employees?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. The constitution was adopted by them?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. By a secret ballot?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. Was there a choice of different forms of constitution, or just this one, where they approved or disapproved it?

Mr. MURPHY. Just the one.

The CHAIRMAN. This constitution provided for an organization of the employees for the purpose of collective bargaining, which, briefly stated, provided for the election in secrecy of a certain number of representatives of the employees to confer from time to time with the employers with reference to matters relating to the relationship between the employees and the employers?

Mr. MURPHY. That is true.

The CHAIRMAN. What was the vote on the adoption of this constitution, if you remember?

Mr. MURPHY. It was 93.2 percent of the entire working force of those combined plants.

The CHAIRMAN. Do you know how many participated in that balloting?

Mr. MURPHY. I would say 93.2 percent of 6,000 working force.

The CHAIRMAN. Of the 6,000 employees, 93.2 percent participated in the adoption of a constitution?

Mr. MURPHY. Exactly.

The CHAIRMAN. What part of that percentage voted for the constitution under which you are now operating?

Mr. MURPHY. Just what I am telling you.

The CHAIRMAN. All of the employees voting?

Mr. MURPHY. Yes, sir; exactly.

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The CHAIRMAN. Did all of the employees vote?
Mr. MURPHY. 93.2 percent did.
The CHAIRMAN. Were there any against the constitution?
Mr. MURPHY. No; it was unanimous.
The CHAIRMAN. So 93.2 percent of all of the employees voted for this plan to organize for the purpose of collective bargaining?
Mr. MURPHY. That is true.
The CHAIRMAN. Then later you selected these 30 representatives?
Mr. MURPHY. Originally there were 18.
The CHAIRMAN. Originally you had an election of those 18 representatives to represent the employees in collective bargaining with the employers?
Mr. MURPHY. That is true.
The CHAIRMAN. Was that election a secret election?
Mr. MURPHY. By secret ballot; yes, sir.
The CHAIRMAN. How many participated in that election?
Mr. MURPHY. 93.2 percent of the entire workmen.
The CHAIRMAN. The same number that decided to adopt a constitution?
Mr. MURPHY. That is true.
The CHAIRMAN. Now, how many candidates were there for the purpose of choosing these 18 representatives?
Mr. MURPHY. I believe in one unit down there, there were about 400 candidates. I think every man in the mill was a candidate.
The CHAIRMAN. That sounds like the Democratic Party.
Mr. MURPHY. If that is not democratic enough, I don't know what would be.
The CHAIRMAN. Did they vote in each unit, so that each unit would have a representative?
Mr. MURPHY. They voted this way, so that there would be 1 representative for 200 employees; and then in the units where there were 1,800 to 2,000 men, they, of course, had that many employees representing them.
The CHAIRMAN. The result of the balloting was that 18 men were chosen at the first election?
Mr. MURPHY. That is true.
The CHAIRMAN. And it was considerably divided?
Mr. MURPHY. If 400 men in candidacy in one outfit were voted for, it naturally was very much divided.
The CHAIRMAN. Those men then became the representatives of your body of employees?
Mr. MURPHY. That is true.
The CHAIRMAN. You continued in office for 1 year?
Mr. MURPHY. Yes, sir.
The CHAIRMAN. At the end of that year you had another year?
Mr. MURPHY. That is true.
The CHAIRMAN. Did you increase the number of representatives at the second election?
Mr. MURPHY. Due to the fact the Democratic Party had put more men to work, we naturally had more working force and consequently more representatives.
The CHAIRMAN. So there are some advocates of the "new deal" up there?
Mr. MURPHY. That is true.

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The CHAIRMAN. How many representatives did you include in the second election?

Mr. MURPHY. Thirty-one.

The CHAIRMAN. You, of course, had many candidates, as you did in the previous election?

Mr. MURPHY. I don't think we had quite 400 in that outfit, but we did have numerous candidates.

The CHAIRMAN. And after a secret ballot was taken, 31 of the men were chosen?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. How many of the men participated in this second election?

Mr. MURPHY. 98.2 percent.

The CHAIRMAN. Of all of the employees?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. Was there any influence, pressure, or interference of any kind exerted by the employers in either of these elections in the choosing of the representatives?

Mr. MURPHY. No, Senator; there was not. The employers had absolutely nothing to do with it, other than convening the first gathering, where they explained to us their desire was to put into effect a representative plan.

Prior to that time we did not have any form of representation, though it is true that there were a number of Amalgamated Iron and Steel Workers employed in the district.

We have no quarrel with the outside organizations; and as a matter of fact, a number of the fellows that are representatives carry cards, and I feel sure they are regarded very highly in outside labor organizations.

It is also true that the president of the Amalgamated Lodge is a member of our representative body, and he was appointed by myself on no. 2 body that is charged with wage disputes, working conditions, and so forth.

The CHAIRMAN. He was elected one of the representatives?

Mr. MURPHY. Yes, sir; he was.

The CHAIRMAN. And he is on a subcommittee of your representatives?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. Are you chairman of the representative body?

Mr. MURPHY. Of the Youngstown district; yes.

The CHAIRMAN. How often do you meet?

Mr. MURPHY. We meet every month.

The CHAIRMAN. What do you discuss at these meetings?

Mr. MURPHY. Well, plenty.

The CHAIRMAN. All of the disputes, grievances, and differences of anyone that arise in the carrying on of the work of the steel plant are discussed?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. How often do you meet with representatives of the employers?

Mr. MURPHY. We meet together as a body of employees this month, and the following month we meet in joint session with representatives of the management.

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The CHAIRMAN. How has this method of settling disputes and differences over conditions of work and wages operated?

Mr. MURPHY. It has been very good.

The CHAIRMAN. Are the men satisfied with it?

Mr. MURPHY. That would be a difficult thing to say. I would say that the majority of the men today are satisfied with it, and when I say they are satisfied I do not mean to imply that the entire plant is, but I would say at least 98 percent of the men in there are well satisfied with it.

The CHAIRMAN. Has any attempt been made to form a local branch of any national labor union?

Mr. MURPHY. I mentioned the fact that we have a gentleman who is at present a member of one of the unions on our board.

The CHAIRMAN. So there is coexistent with this organization many employees members of a branch of a national labor organization?

Mr. MURPHY. That is true.

The CHAIRMAN. And that is called what?

Mr. MURPHY. The Amalgamated Association.

The CHAIRMAN. How many members belong to that?

Mr. MURPHY. That I couldn't say, but I can say they are only organized in one small mill, a 10-inch mill.

The CHAIRMAN. That is a small group of all of the employees who have a separate organization connected with the Amalgated Union?

Mr. MURPHY. That is true; but in addition to that there is this other outfit I speak of in the lower plant, I do not know what its name is, but I do not believe they have very many members.

The CHAIRMAN. Do you care to make any further statement?

Mr. MURPHY. Yes, Mr. Chairman, I have a written statement I would like to have submitted.

Senator WAGNER. Mr. Chairman, before going further with that, may I ask a few questions?

The CHAIRMAN. Certainly.

Senator WAGNER. How long have you meen working in this particular plant?

Mr. MURPHY. Twenty-eight years.

Senator WAGNER. Was there any organization or any union of any character there until 2 years ago?

Mr. MURPHY. Formerly there was. When I speak of the Youngstown district, that district formerly was an iron district; that is, they produced puddled iron, and the mills then were comprised of puddling mills.

Senator Davis brought out at the session last year that these puddling mills and finishing mills were concerned only with iron products, and when the steel mills came in we never had any organization in the steel mills, and I believe that is true throughout the entire country.

Senator WAGNER. At least, there was no so-called "representative plan" or "company union?"

Mr. MURPHY. Absolutely none.

Senator WAGNER. Until the National Recovery Act was passed?

Mr. MURPHY. That is true.

Senator WAGNER. Until 7 (a) became a part of the National Recovery Act?

Mr. MURPHY. That is true.

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Senator WAGNER. Then you proceeded to organize a union within the shop?

Mr. MURPHY. I would not call it a union.

Senator WAGNER. A representation plan?

Mr. MURPHY. A representation plan; yes, sir.

Senator WAGNER. That began by submitting to the workers a constitution; is that right?

Mr. MURPHY. That is right.

Senator WAGNER. Who drafted that constitution?

Mr. MURPHY. I think probably—when I say I think, I mean I later learned, I believe—this plan had been in vogue in different plants, like the Bethlehem Steel and the Youngstown Sheet & Tube, the Colorado Iron & Fuel.

Senator WAGNER. What I mean, it was a plan drafted by the employer and not by the workers?

Mr. MURPHY. That is it exactly.

Senator WAGNER. Have you a copy of the constitution here?

Mr. MURPHY. I am sorry to say I do not have a copy.

The CHAIRMAN. The other gentleman has furnished a copy of the constitution.

Mr. MURPHY. May I say this to you——

Senator WAGNER. May I ask a few questions first?

Mr. MURPHY. Certainly.

Senator WAGNER. Does this constitution limit those that may represent the workers in efforts of collective bargaining, to employees of the particular plant, under this constitution?

Mr. MURPHY. Not as that constitution reads. In other words, any man could be elected in that plant, but it so happens each of the men in the plant is capable of effecting their own bargaining, and they do not go outside.

Senator WAGNER. All of those who are members of the committee are employees of the plant?

Mr. MURPHY. Yes, sir.

Senator WAGNER. Under this constitution could you have a ballot drawn by which the workers would be permitted to vote for an outside organization to represent them?

Mr. MURPHY. Let me understand that. Under this constitution would it be possible——

Senator WAGNER (interrupting). In balloting, for instance, for representative, could the workers in that plant vote for an outside union to represent them?

Mr. MURPHY. I would say yes. That is my personal opinion.

The CHAIRMAN. That is, if a substantial number of employees petitioned your group known as the "representatives", for a ballot to decide whether or not you would abandon this present system and set up a trade union, would it be possible for such a ballot to be taken?

Mr. MURPHY. You mean to change the name of the organization?

The CHAIRMAN. Yes; and the form of it.

Mr. MURPHY. I think if a substantial number did that, it would be their prerogative, and I may say I think that should be their prerogative. I have no ax to grind against organized labor, and I think if they wanted to be represented outside, the company will meet them outside.

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Senator WAGNER. I have the constitution here, and I will read it to see if that can be done.

The constitution provides:

> Any employee who has been on the company's pay rolls for a period of at least 1 year immediately prior to the nomination; who is 21 years of age or over, and who is an American citizen, shall be considered qualified for nomination and election as an employee representative.

That seems to exclude anybody as an employee representative unless he has been at least on the company's pay roll for 1 year prior to nomination.

Mr. MURPHY. I grant that, but you asked me if they could elect an outside representative.

Senator WAGNER. Does that not limit it?

Mr. MURPHY. They cannot elect them under that plan, the very name of it answers that.

Senator WAGNER. That is what I am saying, under your plan at the present time no one can be elected as a representative except one who is elected under the plan.

Mr. MURPHY. Certainly, that is correct.

Senator WAGNER. That is what I asked, Mr. Chairman, that under this constitution they could not vote for an outside union to represent them.

The CHAIRMAN. I do not think that, but I do think if the majority of the employees wanted to form a trade union, they could force the representatives to hold an election for that purpose.

Mr. MURPHY. Yes; I think that is so.

The CHAIRMAN. In other words, when a majority of the employees would see fit in an election to choose men who are union men, a majority of them could do so.

Mr. MURPHY. That is true. I think I might answer that question in this way: I have heard our district manager make this statement, that he was prepared to meet anybody, regardless of what outside national organization they represented, but he wanted to meet his employees, and that question, as far as I am concerned, as an employee, I don't think should be asked of an employee to answer company matters that pertain to company policies. I am not speaking anything with regard to the company.

Senator WAGNER. I am guided entirely by your constitution. As the constitution is now written, you are limited in your elections to elect only a person qualified as I enumerated a moment ago.

Mr. MURPHY. That is true as an employee representative.

The CHAIRMAN. Some of those employee members are members of a union?

Mr. MURPHY. That is true.

The CHAIRMAN. And they have been elected as a representative of the employees?

Mr. MURPHY. That is true.

The CHAIRMAN. If a time came when you elected a majority of your board of 31 from among union men, they could proceed to unionize your plant if they are capable of doing it?

Mr. MURPHY. Absolutely. And I would say if they had a majority in this national labor outfit representing a majority of the plant of workers, there would be no question about it.

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Senator WAGNER. If I may ask, Mr. Murphy, how does this legislation interfere in any way with what you say? Do you oppose the prohibition of any of the unfair labor practices that are enumerated in this proposed bill?

Mr. MURPHY. The only part I am objecting to is the part that might render ineffective the representation plan.

Senator WAGNER. In what way?

Mr. MURPHY. I feel that the interests of the employer and the employee are mutual to a certain extent, and I think the service performed by this body of representatives is a mutual benefit to both the men and the employer, and for that reason I believe the company should be permitted to compensate those men on the ratio of their hourly rate of pay.

As I read the bill, it would render that impossible, and consequently it would render our representation plan ineffective.

Senator WAGNER. The only objection you have to this proposed legislation is that it does not permit the management or the employer to pay the rates of the workers' pay while they are representing the workers. Is that the objection you have?

Mr. MURPHY. Well, I put it this way; I feel any laborer is worthy of his hire. Don't you?

Senator WAGNER. Yes.

Mr. MURPHY. And I think those representatives that are performing this collective bargaining for their fellow workmen should be paid.

Due to the fact there is no outside organization, and they do not receive the money that the outside worker does receive, the only place he can receive it is from the company, and it is a very limited amount.

The wording of this proposed labor bill would render that part of it ineffective. For that reason I am opposed to that particular part of this bill.

Senator WAGNER. Of course, the bill, even as it is, under the rules of the Board, permits the allowance for time actually spent by the representatives in the work of their union, either in the inside union or representative plan, or the outside union. Do you hold there should be compensation beyond that?

Mr. MURPHY. No, sir.

Senator WAGNER. The bill permits that payment to be made now, as I understand it.

Mr. MURPHY. I do not so understand it.

The CHAIRMAN. I understand, Senator Wagner, the reason for these employees coming here—perhaps I got it from their communication, or from their employers—is for the purpose of showing that there exists in the steel plants some kind of organization which is working satisfactorily with the employees and the employers, and they do not want any law passed which will interfere with those organizations.

Your real purpose is to see that we do not interfere with the kind of organization you have, and you really say, let us alone and let us work out our own problems through this form of organization you have?

Mr. MURPHY. Yes; that is correct, and we do not think this bill will permit us to do that.

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The CHAIRMAN. I think you are wrong in the way you think about it.

Senator WAGNER. I recognize the fact that we have to make concessions, even of our views, but I never could myself understand how one could effectively represent workers in his activities if he is paid by the very person from whom he expects to get the best terms possible for his fellows. To me it always looked like the plaintiff lawyer paying the attorney fees for the defendant, and that is a general view. That is the reason I have been a little apprehensive about that provision.

However, let me ask you another thing, Mr. Murphy; you are paid for the services you perform on behalf of the workers?

Mr. MURPHY. That is true.

Senator WAGNER. You are paid by the employer with whom you negotiate for the workers?

Mr. MURPHY. That is true.

Senator WAGNER. You have a written agreement now setting forth the wages, the maximum hours of employment, and other conditions of employment, have you not, between the employer and the employees?

Mr. MURPHY. I have no general agreement that would cover the entire worker, but I do have special written agreements that cover practically all of the important jobs of the plant.

The CHAIRMAN. Previous witnesses have testified they keep minutes, and in the minutes of the proceedings there are statements of what have been agreed to and what they understand to be the policy of the employee and employer in these disputes, but there is no written contract.

Senator WAGNER. That is what I had in mind—a collective-bargaining agreement, such as are usually made by outside representatives of the workers.

Mr. MURPHY. We do not have that in the sense you say, but we do have an agreement signed by the men and by the management that covers the tonnage workers of the plant and that covers the important workers in the plant.

Senator WAGNER. Now, as to the meaning of this constitution which has this limitation in it to which I have referred, it also provides it may be amended at any time by a two-thirds vote of the entire membership of the joint committee on rules, ways, and means. That is not a two-thirds vote of the workers, but by a concurrent vote of the majority of the representatives of the general body of workers, and in addition, also, of the representative of the management.

In other words, here is a constitution to guide the activities of a union, organized to better their working conditions, whose constitution, originally drafted by the employer with certain specific limitations cannot be amended so as to remove those limitations without the consent of the employers.

I am giving this for the information of the committee.

Mr. MURPHY. I might say, for the information of this committee, this is practically a new plan to me, and it was put into effect, as I stated, 2 years ago. At the end of the first year I asked for four amendments, and to me they were vital amendments. They set up

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the specific time in regard to how long it would take the management to reply to any question pertaining to wages or working conditions, and they made all such applications for wage adjustments retroactive to the time the petition was filed with the company, and also an amendment that the plan could only be terminated by a three-fourths majority; and they gave me every amendment I asked for.

Senator WAGNER. Do not understand me to question in the slightest your sincerity; you are doing your best for the workers; but I am talking about the handicaps you are under.

So far as this bill is concerned, I think all it attempts to do is to make the American worker a free man to do as he chooses—to have your plan or some other plan or to have no plan.

As I understand it, the only objection you have to the plan is that it may prohibit the employer from paying the representatives of the workers during their activities in behalf of the workers.

Is that right?

Mr. MURPHY. Yes; and I may say, my instructions from the general body was, they did not ask me to do anything nor did the company ask me to do or say anything about organized labor on this particular bill; and the only statement I wanted to make was, we wanted our plan to continue and we do not want anything done to destroy its effectiveness.

The CHAIRMAN. There is not anything in this bill objectionable to this man.

Sentor WAGNER. Absolutely nothing, so long as it is the free will of the worker. I would not myself belong to an organization in which the constitution under which I am guided as a worker cannot be amended unless my employer says so. I think that is against the whole idea of the economic freedom of the worker, but that is your matter, and not mine, and if the workers want that, they have the right to have it. All I want is to have them economically free, as well as politically free.

Senator MURPHY. Has your organization the right to review the action of the management in dismissing an employee?

Mr. MURPHY. Yes; to a certain extent.

Senator MURPHY. If an employee be dismissed for insufficient reasons, he is enabled to make contact with his representative, and the representative would take that before the proper committee. I might say the ratio of those cases amount to about 83 percent of all cases brought before the joint committees, have been determined in favor of the men.

Senator MURPHY. How many men would sit in a council that would pass on that question?

Mr. MURPHY. Five men representing the employees and five men representing the management.

The CHAIRMAN. So that you have had many cases where employees have been discharged, and the employees felt that the discharge was unfair, and they have brought it to the attention of the representatives and the representatives have fought it out with the management. and in 83 percent of the cases the employees have been restored to work?

Mr. MURPHY. We do not have any men discharged, believe it or not. As a matter of fact, I do not know since I have been engaged

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in this representation plan of one man we have had any labor trouble with. As a matter of fact, I have been employed practically all of my working years in this plant, and I never knew of any labor trouble in the plant. That goes back more years than I care to think of.

The CHAIRMAN. What is the nature of these complaints you have adjusted?

Mr. MURPHY. They cover practically everything. Taking the cosmopolitan groups that are employed in the plants, you can imagine what they would do. It covers everything in regard to the distribution of time due to the fact that their work today is not going 100-percent capacity, and our operations are limited, so that the distribution of time is a very important thing, and they want a fair ratio of the time the plant is operating.

The CHAIRMAN. All of those questions are decided by your board?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. Now, about your payments, I do not know whether Senator Wagner understood just what you meant by what you were paid by the employer, and I am wondering if your constitution is the same as testified by other witnesses. Just what are you paid by your employers as a representative of the employees?

Mr. MURPHY. I am paid exactly what I would make as a bloomwell engineer, and that only.

The CHAIRMAN. That is not interferred with in this bill.

Senator WAGNER. That payment is for the time you use off of your job. You are paid for that time and nothing else?

Mr. MURPHY. That is correct; nothing else.

The CHAIRMAN. You are extended no other favors or privileges by the management?

Mr. MURPHY. No, sir.

The CHAIRMAN. Are any of the others?

Mr. MURPHY. Not that I know of; no, sir.

Senator WAGNER. Did you have a meeting of the workers before you came here?

Mr. MURPHY. Absolutely, and I asked for it.

Senator WAGNER. Of all of them?

Mr. MURPHY. All of them.

Senator WAGNER. I got a letter from somebody denying that there was any meeting of the workers themselves, and that is why I am inquiring.

Mr. MURPHY. In the Youngstown district—of the workers, is that what you mean?

Senator WAGNER. Yes.

Mr. MURPHY. That would be just as logical as to say for the Congress to ask to have a meeting of the men who elected them. We could not have a meeting every time like—every time anything like this came up.

Senator WAGNER. I wanted the committee to know you are representing the council and not the entire employees.

The CHAIRMAN. You may proceed with your statement now, Mr. Murphy.

Mr. MURPHY. My name is Martin Murphy; my place of residence is no. 396 Warren Avenue, Youngstown, Mahoning County, Ohio.

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I am employed by the Republic Steel Corporation in said city in the capacity of a blooming mill engineer and I have been in their service for a period of 28 years.

In June 1933 an employee plan of representation for the purpose of collective bargaining was inaugurated and an election held, at which time 93.2 percent of the approximate force of 6,000 employees cast their ballots in approval of such a plan. There were 18 representatives elected in the district and I was chosen as general chairman of the representative body.

In June 1934 the second election was held and at that time 98.2 percent of said body of employees cast their ballots, resulting in the election of 31 representatives. I was again chosen as the general chairman of the representative body for the years 1934 and 1935.

From the time of the inauguration of the plan in 1933 to March 1, 1935, these representatives, through their individual action or collectively, have acted upon 495 cases, of which 83 percent were decided in favor of the employees. These cases covered a large scope and embraced matters of safety, sanitation, hours of service, wage adjustments, distribution of available working time, comfort stations, employee gardens, welfare projects, employee transportation, parking of automobiles, and so forth.

We hold the employee plan of representation as here conducted to be a good and sufficient means of collective bargaining.

As chairman of the general body of employee representatives representing 6,000 workers in Youngstown, Ohio, I am opposed to any legislation which would interfere with our present satisfactory method of collective bargaining under the employee representation plan.

Senator WAGNER. Just one more question, since you are familiar with the procedure. Where are these elections held?

Mr. MURPHY. The Youngstown district covers quite an area, and we have elections in the whole area.

Senator WAGNER. I mean are they held right in the plant?

Mr. MURPHY. Surely.

Senator WAGNER. And as each man votes he is checked off; is he not?

Mr. MURPHY. No; they are not; I stopped that.

Senator WAGNER. That is one improvement; but originally in your first election, each man was checked off as he voted. Is that right?

Mr. MURPHY. No, sir; the first election I stopped that. The only possible way that a man could be identified was by a number on that ballot, and all of those numbers were carefully removed before any ballot was cast.

Senator WAGNER. There was a method of identification?

Mr. MURPHY. Absolutely none.

Senator WAGNER. When he voted, what did you do?

Mr. MURPHY. They had a poll book just the same as you would have in any election.

Senator WAGNER. It is a pay-roll book, is it not?

Mr. MURPHY. Yes; of the men in that particular district.

Senator WAGNER. And as each man would vote was that not checked off?

Mr. MURPHY. Surely.

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Senator WAGNER. So that the employer knew exactly who voted?

Mr. MURPHY. He knew who voted, yes; otherwise we would have men voting a dozen times, and we had to make some kind of a check, but there was no identification of that check. When that employee came for his ballot, when his name was called off, he was given his ballot; but that ballot was a blank ballot, and there were no identification marks on it whatsoever.

Senator MURPHY. What were these numbers on there originally?

Mr. MURPHY. It was for the convenience of both the workers and the employers. They were originally numbered and somebody told me about it, and I told them to cut them off.

Senator MURPHY. It would have been possible to identify them by that number?

Mr. MURPHY. Yes; but I really think there was not any thought of that nature entered into it.

The CHAIRMAN. Have you any further statements, Mr. Murphy?

Mr. MURPHY. No; thank you, Mr. Chairman.

The CHAIRMAN. We will next have Mr. Moore.

STATEMENT OF JAMES MOORE, CHAIRMAN OF THE GENERAL BODY, CLEVELAND DISTRICT, REPUBLIC STEEL CORPORATION

The CHAIRMAN. Will you give your full name, Mr. Moore?

Mr. MOORE. James Moore.

The CHAIRMAN. Are you employed in the same plant as the other gentleman?

Mr. MOORE. No, sir.

The CHAIRMAN. What is your occupation?

Mr. MOORE. Bricklayer.

The CHAIRMAN. Who is your employer?

Mr. MOORE. The Republic Steel Corporation.

The CHAIRMAN. Are you a member of the representation council of workers in that plant?

Mr. MOORE. Yes, sir.

The CHAIRMAN. Are you chairman of that council?

Mr. MOORE. Yes, sir.

The CHAIRMAN. How long have you been chairman?

Mr. MOORE. This is the second year.

The CHAIRMAN. Is the general plan of your organization similar to that testified by the last witness?

Mr. MOORE. It is.

The CHAIRMAN. How many elections have you had?

Mr. MOORE. Two.

The CHAIRMAN. Have you a statement you desire to make to the committee?

Mr. MOORE. Yes, sir.

The CHAIRMAN. You may proceed with your statement.

Mr. MOORE. I respectfully request that the following statement, made by me voluntarily, be filed with your committee and entered upon the record of this hearing relative to the Wagner national labor relations bill no. S. 1958.

My name is James Moore. I am employed as a bricklayer at the Upson nut division of the Republic Steel Corporation, Cleveland,

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Ohio. I have been employed by this for the past 12 years. I reside at no. 9823 Simmer Street, Cleveland, Ohio.

I am chairman of the general committee of employee representatives of the Upson nut division and I am here by the unanimous approval of that committee. This committee represents the employees of the company which, by the way, totals 1,143 persons in matters of collective bargaining.

The employee representation plan was started in June 1933. I was elected to represent the department in which I work by the employees of that department. The general body of representatives elected me general chairman of the group. At the time of the hearings on the Wagner bill last year I appeared before this committee. Since that time I have been again elected to represent the employees of the department in which I work and was also chosen general chairman of the employee committee. I am appearing before this committee for the second time and now with practically 2 years' experience of collective bargaining under the employee representation plan.

The committee has handled 59 cases during the period from June 1934 to February 28, 1935. Of these, 49 were settled in favor of the men. Since the plan has been in force the employee committee has handled 117 cases. Of this number 107 were adjudicated in favor of the employees.

The members of the general body of employee representatives were elected by 96.1 percent of the total number of employees in 1933 and 97.2 percent in 1934, and I believe that the general body expresses the opinion of their constituents when they say that the employee representation plan, as functioning in our plant, is an effective means of collective bargaining.

As I said last year, we at all times have access to the management's office and this has done much to get a better understanding between employee and employer.

If I may, permit me to repeat my comment when appearing before this committee 1 year ago:

> I have obtained more good for myself and the people whom I represent in the short time the shop representation has been in effect, than from any labor union, and understand, I was a member of the Bricklayers' Union for many years. I am opposed to any legislation which will injure this representation plan.

The CHAIRMAN. Are there any questions you would like to ask, Senator Wagner?

Senator WAGNER. Yes; there are. Who suggested 2 years ago that you organize this representation plan, Mr. Moore?

Mr. MOORE. The company.

Senator WAGNER. And the company drafted your constitution?

Mr. MOORE. Yes, sir.

Senator WAGNER. Have you paid your own expenses down here?

Mr. MOORE. No, sir; I have not.

Senator WAGNER. Who is going to pay them?

Mr. MOORE. I think myself, the company should pay them. I have paid them so far myself.

Senator WAGNER. Do you expect the company to pay them?

Mr. MOORE. To reimburse me; yes.

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Senator WAGNER. Is that so of the other representatives, do you know?

Mr. MOORE. I think so, but they can answer for themselves.

Senator WAGNER. You are also paid for your services by the company as representative of the workers?

Mr. MOORE. Yes, sir.

Senator WAGNER. I do not think I want to ask anything further, Mr. Chairman.

The CHAIRMAN. The next witness is Mr. Mulligan.

Please come forward Mr. Mulligan.

STATEMENT OF EDWARD J. MULLIGAN, CHAIRMAN GENERAL BODY, WARREN DISTRICT, REPUBLIC STEEL CORPORATION

The CHAIRMAN. Will you please give your full name for the record, Mr. Mulligan?

Mr. MULLIGAN. Edward J. Mulligan.

The CHAIRMAN. You are employed as an electrician?

Mr. MULLIGAN. Yes, sir.

The CHAIRMAN. With what company?

Mr. MULLIGAN. The Republic Steel Co.

The CHAIRMAN. In what district?

Mr. MULLIGAN. The Warren (Ohio) district.

The CHAIRMAN. What is your plant known as?

Mr. MULLIGAN. It is the Warren plant of the Republic Steel Co.

The CHAIRMAN. You are chairman of the representatives, representing the employees in that plant?

Mr. MULLIGAN. That is correct.

The CHAIRMAN. How many employees do they have?

Mr. MULLIGAN. Around 6,000.

The CHAIRMAN. Is the plan of your organization similar to that testified by the previous witnesses?

Mr. MULLIGAN. It is.

The CHAIRMAN. You have a statement you desire to present to the committee?

Mr. MULLIGAN. Yes, sir.

The CHAIRMAN. You may proceed with that statement.

Mr. MULLIGAN. I am Edward J. Mulligan, general chairman of the employees' representation plan of Warren district, Republic Steel Corporation. I have been properly authorized by this representative body to appear before the Senate Committee on Education and Labor in the interest of our employees' representation plan.

At our last annual election of employee representatives in June 1934, there were 6,059 employees on the pay roll of Republic Steel Corporation, Warren district. Of this number, 78 percent voted for representatives under this plan. I want to convey to you our opinion of the usefulness and the value of the employees' representation plan to the employees in our district.

Considering the fact that our plan has been functioning less than 2 years, we believe our accomplishments in industrial relations are outstanding. As proof of this, we offer the following data taken from our records:

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During the past 21 months, 303 items covering employment, working conditions, wages, safety, health, sanitation, athletics, and so forth, were disposed of in committee as follows:

Two hundred and fifteen settled in the affirmative.

Forty-one settled in the negative.

Twenty-two withdrawn by employees.

Fourteen compromised.

Eleven pending.

The figure of 303 items does not include a vast number of departmental problems handled directly by the representatives with the superintendents concerned, of which we have no written record but can safely say will run into several hundred.

In the disposition of matters through our plan, we adhere to the following procedure:

Any matter which, in the opinion of any employee or group of employees, requires adjustment, and which such employee or group of employees has been unable to adjust, either directly with the foreman or through his or their representatives, may be taken up by such employee or group of employees, either in person or through any representative by his or their department in writing: First, with the superintendent concerned; second, with the management's representative; third, with the management, who shall endeavor to effect a settlement, or who may, with the approval of all the parties, refer the matter to proper joint committee. If the joint appeals committee shall fail to effect a settlement, the president of the company shall be notified, and the matter may be referred if the president and a majority of the employee representatives on the joint appeals committee agree to such reference to an arbitrator or arbitrators, to be determined at the time according to the nature of the controversy.

I have observed, as general chairman, that the employees have little or no hesitancy in bringing before the management such matters as concern their general welfare, and that the plan has been the means of developing a closer relationship between the employees and the management than has ever existed in our plant. It has also given the employees a much better understanding of the management's problems as regards plant operations, and I believe it furnishes the management a means of getting a better insight into the worker's viewpoint.

I am convinced that our employees' representation plan furnishes the best method of collective bargaining today; however, I believe time and experience will show many improvements. In large corporations, such as ours, difficulties and delays sometime occur. When bargining with local managers it is found that authority is limited to minor items. Subjects of major importance must necessarily be referred to higher officials; consequently delays are likely to ensue. This sometimes tends to create doubts in the minds of employees as to the feasibility of the plan, or the sincerity of those involved in the adjustment of the subject under discussion.

Our interpretation of the proposed legislation, Senate Bill No. 1958, is that in the event of its adoption our representation plan would become ineffective as an agency for collective bargaining, although we represent a substantial majority of the employees. We ask you to give serious consideration to these facts.

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Senator WAGNER. What in this bill will destroy your representation plan?

Mr. MULLIGAN. Senator Wagner, as I understand this proposed bill, it is a majority rule. For instance, if your bill was adopted it would necessarily mean that one would be practically forced to join an organized outside representation plan.

Senator WAGNER. Where is that in the bill?

Mr. MULLIGAN. I did not quite understand.

Senator WAGNER. What provision of the bill does that?

Mr. MULLIGAN. The majority rule.

Senator WAGNER. You have the majority rule in your plant now, have you not?

Mr. MULLIGAN. We have, but by the adoption of this bill the representation plan would become ineffective to the extent that the amalgamated association, or some other outside association would be recognized as the outstanding organization, and necessarily so, and a 10 percent membership in the outside organization would mean it would be a minority ruling the majority, rather than the majority ruling the minority.

Senator WAGNER. I see you have a clear misconception of the bill. As to the minority ruling the majority, as long as they can elect you, you are the representative?

Mr. MULLIGAN. That is right.

Senator WAGNER. That is a majority rule and it cannot be changed unless the constitution is changed, and the majority of the workers vote for some other representation.

Mr. MULLIGAN. That is correct.

Senator WAGNER. That is not changed by this legislation. I was sure you had a misconception of it.

Mr. MULLIGAN. You understand we have both the amalgamated representation plan functioning in our plant and the employee representation plan, right now.

Senator WAGNER. This does not disturb that. We were talking about the majority rule, and I am trying to find out what is your real opposition to the legislation. Let me ask one or two questions. Are your expenses here being paid by the company?

Mr. MULLIGAN. I hope so.

Senator WAGNER. I mean, do you expect them to pay your expenses?

Mr. MULLIGAN. I do.

Senator WAGNER. Are you paid by the company during the time you represent the workers?

Mr. MULLIGAN. Yes, sir.

Senator WAGNER. This organization in your shop was only started 2 years ago?

Mr. MULLIGAN. Two years ago; yes.

Senator WAGNER. That was after 7–A and the National Recovery Act became effective?

Mr. MULLIGAN. That is right.

Senator WAGNER. Up to that time you had no means of bargaining?

Mr. MULLIGAN. No definite means; no.

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Senator WAGNER. Did your management suggest the organization of this union?

Mr. MULLIGAN. The plan was, or the constitution was, submitted for the approval of a certain group of men who were selected for various reasons, possibly because they had been longer in the service, or for being outstanding for some reason or other, and they voted as to whether to accept it.

Senator WAGNER. Where did the constitution come from, do you know?

Mr. MULLIGAN. I could not say definitely.

Senator WAGNER. It did not come from the workers?

Mr. MULLIGAN. No, sir.

Senator WAGNER. Then it came from the management, did it not?

Mr. MULLIGAN. It did, but I do not know what source.

Senator WAGNER. You are familiar with the constitution; does that limit the representatives to those who actually work in the shop?

Mr. MULLIGAN. Yes.

Senator WAGNER. So that under your system, no outside person or union could be elected to represent the workers?

Mr. MULLIGAN. We have never had any request for it.

Senator WAGNER. I am not complaining, I am just talking about the constitution. It also provides that the constitution cannot be amended without the consent of the management?

Mr. MULLIGAN. That is correct.

Senator MURPHY. I thought I sensed an apprehension on your part that if this bill should be passed, 51 percent of the employees would vote to join a national union. Is that correct?

Mr. MULLIGAN. No, sir.

Senator MURPHY. You are not apprehensive of that?

Mr. MULLIGAN. No, sir.

Senator WAGNER. As a matter of fact, under the constitution which the management has drafted for you, such an election cannot be held until your constitution is amended, and that cannot be amended without the consent of the management?

Mr. MULLIGAN. I would like to make this point clear. We do have the amalgamated association representation there, and if they do not care to vote under this employees' representation plan, they would simply join the amalgamated association. Both organizations have collective bargaining with the management.

Senator WAGNER. As long as you control the majority you are in control of negotiations with the management, which is a majority rule.

Mr. MULLIGAN. That is right but the management recognizes the other organization as well. They function separately from our organization.

The CHAIRMAN. Is there anything further, Mr. Mulligan?

Mr. MULLIGAN. No, thank you, Mr. Chairman.

The CHAIRMAN. If the representatives of employees of the Bethlehem Steel Co. are in the room, will they please come forward?

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STATEMENT OF ALBERT CREW, REPRESENTATIVE OF THE EMPLOYEES OF THE BETHLEHEM STEEL CO. PLAN OF EMPLOYEES' REPRESENTATION AT MARYLAND PLANT OF BETHLEHEM STEEL CO., SPARROWS POINT, MD.

The CHAIRMAN. Mr. Crew, yourself and Walter Franz, W. J. Wolf, Russell E. Mackey, and James C. Holland are here as representatives of the employees' representation plan of the Bethlehem Steel Co., at the Maryland plant, Sparrows Point, Md.?

Mr. CREW. Yes, sir.

The CHAIRMAN. Will you speak for all of these employees?

Mr. CREW. Yes, sir; I will.

The CHAIRMAN. Will you give your full name?

Mr. CREW. Albert Crew.

The CHAIRMAN. What is your occupation?

Mr. CREW. Carpenter.

The CHAIRMAN. Where do you reside?

Mr. CREW. Sparrows' Point, Md.

The CHAIRMAN. What is the company with which you are employed?

Mr. CREW. Bethlehem Steel Co., Maryland plant.

The CHAIRMAN. You are chairman of the representation body of the employees?

Mr. CREW. Yes, sir.

The CHAIRMAN. You are speaking for them in your representative capacity?

Mr. CREW. Yes, sir.

The CHAIRMAN. You may proceed with your statement.

Mr. CREW. At a special meeting of the employees' representatives of the Maryland plant of the Bethlehem Steel Co., at Sparrows Point, Md., called to discuss the bill now in hearing before your committee, we, the undersigned, were authorized to appear and protest vigorously the passage of Senate bill no. 1958.

The employees at our plant feel that the enactment of this bill into a law will seriously handicap the operation of the plan of employees' representation, which has been so effective in settling problems and in promoting a feeling of goodwill and understanding between ourselves and the management at our plant. Such action, we believe, would be very unjust, and we know you would only take it through being mislead in your belief as to what the majority of the working men want. Any law that would restrict the operation of our plan in its present form would be very unjust, as unrestricted by legislation it is meeting satisfactorily our needs as a "collective bargaining" agency.

It has been made very clear to us by published reports and through the papers that the bill has been drafted with but one idea in view, viz, to promote and advance the interests of organized labor to the detriment of our plan, that of employees' representation.

The plan of employees' representation has been in force in our plant for 16 years, during which time we have received, and are continuing to receive, all the benefits and opportunities which could possibly be available under the bill now proposed.

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The result of our last election, completed on March 20. 1935, proved very decidedly the wishes and faith of the men in our plan of representation. The number of men available to vote was 11.290 and of this number 10,814, or 94.8 percent, cast ballots in favor of the plan, which leaves small doubt as to their feeling in the matter.

We earnestly entreat you not to pass any legislation designed to weaken our plan of employees representation.

If any of our men wish to join the union they are free to do so, and there is no discrimination against them, but we who want to deal with the management through the plan of employees' representation seriously object to any legislation designed to weaken the plan and eventually force the men into the union.

The CHAIRMAN. Is there a union at your plant?

Mr. CREW. The Amalgamated Association has a very small representation there.

The CHAIRMAN. Do they cooperate with you?

Mr. CREW. In no shape or form.

The CHAIRMAN. They do not vote with you either?

Mr. CREW. No, they do not vote under our plan, but vote in their own organization.

Senator TYDINGS. There is no question in your mind that what you have just read is the untrammeled opinion of the men in the plant at Sparrows' Point?

Mr. CREW. If there was any question in my mind as to that, I would not be here.

Senator TYDINGS. In other words, your coming here does not mean that the company has sent you, but means as well that the men have sent you?

Mr. CREW. This was proposed by myself with a small group of other men, and we called a general meeting and took a vote.

Senator TYDINGS. How do you support your observations that this bill will break up your present arrangement and substitute therefor an organization that your men do not want to join? What do you base that contention upon?

Mr. CREW. I base that contention upon one thing, among other things, but there is one primary reason for that belief of mine, and that is I know, and I have seen it proven time and again, that in any labor board similar to this one or any board sent up to arbitrate anything in any question of a labor dispute, they generally appoint one member to take care of the labor end, and it is invariably some one who is in sympathy with or connected with the American Federation of Labor. That is my principal reason for thinking that bill would break up our plan.

Senator TYDINGS. Would you rather have your own men selected rather than have some one appointed from the outside? Is that it?

Mr. CREW. I do not mean that, but I think, to be perfectly fair, such a board should contain a man from both organizations.

Senator TYDINGS. Let me get that. You have about 95 percent in round numbers in your organization over at Sparrows Point, and around 5 percent in the Amalgamated Association. It is your fear if this bill goes through that the man who represents labor will come from the 5 percent rather than the 95 percent?

Mr. CREW. I believe it would eventually lead to that, and I would like to add, I believe due to the fact that if a charge is brought

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against our organization naturally it would be heard under this bill before the proposed board sitting at that time, and that board would be a man who has entire sympathy with the American Federation of Labor.

Senator TYDINGS. Are these ballots secret ballots or open ballots?

Mr. CREW. They are secret ballots.

Senator TYDINGS. Do any of the Amalgamated men offer themselves as candidates for these representative places?

Mr. CREW. Occasionally.

Senator TYDINGS. Are they elected or defeated?

Mr. CREW. I cannot recall off-hand of anyone who has been elected, but it is a possibility for him to be elected.

Senator TYDINGS. Your main objection, as I understand, is that you are satisfied now with the working arrangement in the plant at Sparrows Point, Md.?

Mr. CREW. Absolutely.

Senator TYDINGS. And you fear if some other bill goes through, those relationships may be disturbed?

Mr. CREW. I feel they will.

Senator TYDINGS. Is that the main objection you have?

Mr. CREW. That is the main objection.

Senator TYDINGS. Suppose it was represented on the floor of the Senate that the new bill would not disturb the present relationship and there was sound argument produced to substantiate that point, would you still maintain that view?

Mr. CREW. Not necessarily; but I cannot conceive of any such circumstance.

Senator TYDINGS. I tried to represent your point of view at the last session of Congress, because I had these signed papers from the men of your organization, but it was contended at that time that the bill would not affect you in any way, and that you could still proceed with your own arrangement. Whether that is so or not I am not prepared to say, but according to the thought you expressed to me that the present set-up might be disbanded, do you still maintain that position?

Mr. CREW. I still maintain that position.

Senator WAGNER. What particular provision of the bill is it that you think will be destructive of your plan—that is, providing a majority of the workers vote for it?

Mr. CREW. The provision that describes the manner in which the board shall be created. Not exactly that, but the board itself shall be composed of so many members, and naturally in such a board there will be a labor man appointed.

Senator WAGNER. Then it is not the bill at all, I understand, that you are disturbed about, but you are disturbed that the President will appoint a member on this board to administer these important functions that you will not be willing to trust to give you a square deal. Is that what it is?

Mr. CREW. No; that is not it at all.

Senator WAGNER. What is it?

Mr. CREW. I believe if the President realizes the circumstances he would be perfectly fair, but I am just judging by past labor boards. For instance, one of the regional labor boards in our own State, in

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Baltimore, had on that board an official of the American Federation of Labor. I do not hold the President responsible for that.

Senator WAGNER. The National Labor Board has today no so-called " representatives of labor " on it at all. There are three members on that board appointed by the President. One is Mr. Biddle, who is a prominent lawyer in Philadelphia. The other is Professor Millis, who is professor of economics at the Chicago University and has had great experience in this field; and the other is Mr. Smith, who comes from the State of the distinguished chairman of this committee, and I think he is regarded very eminently there as a man of high standing with a very high conception of what is just.

Your point is, as I see it, you do not oppose the bill as a bill, but you are not willing to trust these other men on a labor board to decide questions that may arise in the differences between employees and employers. Is that it?

Mr. CREW. No, sir.

Senator WAGNER. What is it then?

Mr. CREW. I believe your point is just a little unfairly taken.

Senator WAGNER. I want you to state it then.

Mr. CREW. I mean no disrespect, but I mean I think your point is a little unfairly taken. I do not disbelieve the honesty of these men, they may be sitting there perfectly honest in their intentions, but the very fact their sympathies lie with a certain organization will unconsciously influence their opinions as handed down.

Senator WAGNER. But, at the present time there is not one man on the Labor Board that is a member of any labor organization.

Mr. CREW. That is one labor board, I might say, one of many.

Senator WAGNER. What I am trying to find out is just what your objection is. You say you cannot conceive of any board being appointed that will be just to you and the men you represent.

Mr. CREW. No; not as long as there is a man on that board, the particular labor board, whose sympathies may unconciously or consciously lie with the other group.

Senator WAGNER. That is your objection to this legislation. Have you any other reasons?

Mr. CREW. Mr. Wolf would like to make a statement.

Senator WAGNER. I will ask you this. Are you being paid for coming here?

Mr. CREW. I am being paid for the time I actually would have worked if I had not come here.

Senator WAGNER. And your fare?

Mr. CREW. My fare; no, sir.

Senator WAGNER. You are paying that yourself?

Mr. CREW. I am not paying it myself; I borrowed it.

Senator WAGNER. We can be candid with one another. I mean do you expect the management to pay your fare?

Mr. CREW. I can reasonably expect it.

Senator WAGNER. You are also paid for your services when you represent the workers in any dealings with the management—you are being paid by the management?

Mr. CREW. Yes; when I receive pay for that. I perform other duties than the duty of collective bargaining.

Senator WAGNER. But you are being paid?

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Mr. CREW. Yes; and there is safety work and other things attached to that.

Senator WAGNER. Do you know whether your constitution permits the selection by the workers of anybody who is not employed in your plant?

Mr. CREW. Yes; the constitution does not permit anybody who is not an employee in our plant to be our representative.

Senator WAGNER. You cannot have anyone outside to represent you under your constitution?

Mr. CREW. Not anybody we do not want to represent the workers.

Senator WAGNER. Doesn't your contitution limit the representation to men that are actually employed in your plant?

Mr. CREW. No, sir; I only actually represent the men that voted for the plan. The men that did not vote for the plan, they can get anybody under the sun to represent them that they want.

Senator WAGNER. Do you have a copy of the constitution?

Mr. CREW. No, sir.

Senator WAGNER. You do have a constitution, though?

Mr. CREW. Yes, sir.

Senator WAGNER. And that constitution enumerates certain qualifications necessary in order to be elected a representative?

Mr. CREW. That is right.

Senator WAGNER. Is one of those qualifications that you must be an employee of the plant?

Mr. CREW. That is right.

Senator TYDINGS. You say this organization you represent has been in existence for about 16 years?

Mr. CREW. Yes, sir.

Senator TYDINGS. Have you ever had any labor trouble during that time?

Mr. CREW. We have had no labor trouble that could properly be classed as such.

Senator TYDINGS. This meeting that was called, at which you were elected and asked you to come over here and present the views of those on the question you represent, who called that meeting, the company, yourself, or both?

Mr. CREW. I personally called it.

Senator TYDINGS. Was there a full and frank discussion of this bill, as full as you could have?

Mr. CREW. There was such a discussion and it lasted 2 hours.

Senator TYDINGS. Was a vote taken at the end of that discussion?

Mr. CREW. Yes, sir.

Senator TYDINGS. And the vote, I understand, was about 94 against a 6 percent vote?

Mr. CREW. Out of the entire body there were 10 votes against, and the balance was for sending this delegation.

Senator TYDINGS. Sending the delegation here to oppose the plan?

Mr. CREW. Yes, sir.

Senator WAGNER. How many did you say?

Mr. CREW. It was 10 against 41.

Senator WAGNER. It was not a meeting of the entire employees but it was a meeting of just the representatives being paid by the management.

Mr. CREW. This group of representatives; yes.

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Senator TYDINGS. Then the men never had any real voice on the proposition?

Mr. CREW. They have had a voice in this form. I have spread it among the shops and I know their sentiments there.

Senator TYDINGS. You say 41 were for it and 10 were not for it?

Mr. CREW. That is right.

Senator TYDINGS. Now, of that percentage that were not in favor of coming over, what is their attitude on this bill?

Mr. CREW. I do not know.

Senator TYDINGS. Was the reason expressed in the meeting because they were opposed to the bill, or because of any other reason?

Mr. CREW. The only other reason I think of was that they could not be quite sure how the men in their particular shop felt about it.

Senator WAGNER. Did you draft this statement yourself?

Mr. CREW. The other four members and myself drafted this statement.

The CHAIRMAN. This statement represents the views of the other three members with you?

Mr. CREW. Yes, sir.

The CHAIRMAN. And they are Walter Franz, secretary, general body employees' representatives; W. J. Wolf, representative; Russel E. Mackey, representative; and James C. Holland, representative.

Mr. CREW. Yes, sir; that is correct.

The CHAIRMAN. Is there anything further?

Senator WAGNER. No; that is all I think.

The CHAIRMAN. Will the representatives of the employees' representatives of the Weirton Steel Co. come forward?

STATEMENT OF JACK LARKIN, GENERAL CHAIRMAN EMPLOYEES' REPRESENTATIVES, WEIRTON STEEL CO., WEIRTON, W. VA.

The CHAIRMAN. What is your full name, for the record?

Mr. LARKIN. Jack Larkin.

The CHAIRMAN. Where are you employed?

Mr. LARKIN. Weirton Steel Co.

The CHAIRMAN. Where is that located?

Mr. LARKIN. Weirton, W. Va.

The CHAIRMAN. What is your position?

Mr. LARKIN. Roller, 48-inch strip mill.

The CHAIRMAN. You are chairman of the general representative body of that industry?

Mr. LARKIN. Yes, sir.

The CHAIRMAN. And accompanying you is Norman K. Moore, whose occupation is blower in the blast furnaces?

Mr. LARKIN. That is correct.

The CHAIRMAN. Mr. Moore, you are general secretary of the representative body?

Mr. MOORE. Yes, sir.

The CHAIRMAN. Mr. Larkin, you may proceed with your statement.

Mr. LARKIN. I am general chairman of the 49 employee representatives elected by the employees of the Weirton Steel Co. The present board of representatives was chosen last December at an election in which 98 percent of the approximately 12,000 employees voted.

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Our plan of representation is entirely in our own hands. We make our own bylaws and the comapny has no control over us whatsoever. I resent the frequent use of the phrase "company-dominated union." Some of our representatives appeared before your committee last year, and as the independence of our plan and its success has been set out fully as a result of an extensive hearing in the United States District Court in Delaware, I do not think it necessary to go into the details of it. I believe that no one can read Judge Nields' opinion without realizing that we have a thoroughly independent and efficient organization.

There are hundreds of other organizations throughout the United States that have been functioning efficiently over a long period of years and I cannot see any reason why the Government should want to exterminate these organizations because of the political pressure of highly paid professional organizers of the American Federation of Labor, who are constantly calling our organization "company dominated" without any proof or evidence. If the American Federation of Labor is good for the workers of this country it can win on its merits and it ought not to have any laws designed to exterminate other organizations, and that is the effect of the bill proposed here.

I want to mention just one point of that bill, and that is the provision of it which would prevent the company from paying any of the expenses of such an organization as ours. We made a written demand upon the management that it pay into our treasury 50 cents a year for each member to cover the expenses of the organization in printing of ballots, circulars, making trips to other mills to compare rates, attendance upon these and other hearings, and so forth. After that money is paid to us on the first of January each year, it belongs to us and we can do with it as we please. We have used it to employ attorneys for services sometimes adverse to the interests of the company. We also demanded that the representatives receive $25 a month compensation for services rendered outside of working hours and the company agreed to make that payment. Under most employee representation plans the representatives are paid at their regular rate of pay for the time spent in the performance of their duties. This is all right when representatives are called away from their regular work because they certainly should not be penalized for time lost in performing their duties as representatives of the men, but when they attend meetings on their own time there is no reason why they should be paid differently according to their hourly rates. A steel mill works 24 hours a day and you can't hold any meeting without taking some away from their work.

A man may be a low-paid man in the mill but his services as a representative of his fellow employees may be just as valuable as a highly-paid worker, and we felt that the representatives should have a flat rate of $25 a month. There is less chance for favoritism under such an arrangement. If the management has to approve the time slips, it would be possible for them to favor one man and stint another. It might even be possible to call meetings at a time which would cause a loss of money to some of the representatives to attend. Under our system every man is paid the same. The men all know that the representatives get this amount. There is no inducement to a representative to manufacture claims in order to

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build up his time spent in his duties as a representative and there is a right of recall if any representative is not attending to his duty.

What good reason is there why the expenses of such an organization should not be paid by the company? We contribute to the income of the company; it's our labor and services that bring in the money, and the fact that a small part of it is set aside for the use of our organization is perfectly fair and just. The total expense of maintaining this plan does not amount to more than one-fourth of 1 percent of the pay roll of the company. The company has nothing to say about who gets the money. The employees choose the representatives. How can it be said that the company has any control over the organization at all by reason of the fact that it pays this sum of money over for the use of the organization? An expenditure of one-fourth of 1 percent to maintain peace and harmony for the men, settle their grievances and adjust their wage disputes, is no unfair burden to the company, and if placed upon the men it does work a hardship. Some of the men receive very low rates of pay and even a couple of dollars a month dues to such men is a burden.

Furthermore, why should any employee have to belong to an organization in order to have his grievances redressed? Why should not every employee in the mill have a right to vote for the persons who are going to represent him, without the necessity of belonging to some national union and contribute to the war chests of the American Federation of Labor?

Why should any employee have to submit to the fines and assessments levied by a national union in order to have some say about the affairs of the employees of the company he works for? Under our system every man in the mill is entitled to representation. He can present any grievance he has and it doesn't cost him a cent.

You would think to hear the arguments that are advanced criticizing the fact that the company pays the expenses of the employee organization that it had the power to pay one man and not another, or to pay or withhold pay, as it saw fit, for the purpose of influencing the votes of the representatives. This is absurd. The ultimate source of the money paid in by the members of a labor organization is from the employer and I cannot see what difference it makes whether the company turns over a lump sum each year, according to a fixed arrangement, or whether the men pay a check-off, which is the system which the American Federation of Labor wants. In the latter case it comes off the men's salaries. A Federal judge gets a fixed salary. It comes from the United States. Would anyone say that he was prejudiced in favor of the United States in deciding a case because his salary happens to come out of the United States Treasury? As long as his salary is fixed and it cannot be taken away from him, he is independent. It is the same situation with our representatives. The amount they get per months is far less than the time they actually spend in their duties as representatives, and neither the company nor anybody else can deprive them of that compensation.

The men can elect anybody as a representative that they wish, even an outsider, and if William Green were elected a representative under our plan, he would be entitled to his $25 a month, just the same as anyone else. How it can be said that this is a method of dominating or controlling the repreesntatives, I do not see. Judge

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Nields found this was not company domination. The only reason the American Federation of Labor would like to get that clause in this bill is because it thinks these organizations of employees, to which an employee may belong without being charged dues or assessed fines, interfere with its revenue. I cannot think that the Government wants to lend its assistance to help force the working men of the country to pay tribute to the American Federation of Labor. A great many more men belong to independent organizations, so-called "company unions", than to the American Federation of Labor. If these employee representation plans had the high-paid lobbies of Washington that are maintained by the American Federation of Labor we could bring thousands of men here to complain of this proposed bill, but I believe that you men intend to protect the rights of the workers who want their own organizations, and one of the most damaging things about this whole bill, as far as we are concerned, is the attempt to make it illegal for the company to pay the expenses of our organization.

The CHAIRMAN. Have you a national trade union among your employees?

Mr. LARKIN. No national union, but it has been talked of several times.

The CHAIRMAN. The only organization for collective bargaining is this organization you represent?

Mr. LARKIN. Yes.

The CHAIRMAN. How many of your employees participated in the balloting?

Mr. LARKIN. Ninety-eight percent of all of the total workers.

The CHAIRMAN. When did you have the last election?

Mr. LARKIN. Last December.

The CHAIRMAN. How many elections had you had prior to that?

Mr. LARKIN. Two—one in 1933.

The CHAIRMAN. The committee will stand adjourned until 2:30 o'clock this afternoon and at that time we will hear the employees of the American Rolling Mills Co., Jones-Laughlin Steel Corporation, American Sheet & Tin Plate Co., Carnegie Steel Co., and the American Iron & Steel Institute.

(Thereupon a recess was taken until 2:30 o'clock of this day.)

AFTERNOON SESSION

(The recess having expired, the committee reconvened at half past 2 p. m.)

Present: Senators Walsh (chairman), Murray, Wagner, and George.

TESTIMONY OF EMPLOYEE REPRESENTATIVES, WHEELING STEEL CORPORATION, STEUBENVILLE WORKS

The CHAIRMAN. Will the employees of the Wheeling Steel Corporation come forward, please.

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. Are you the only one?

Mr. MITCHELL. No, sir; I have four with me.

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The CHAIRMAN. Will you call them all, please. I understand you represent yourself, Guy E. Mitchell.

Mr. MITCHELL. Right.

The CHAIRMAN. And you are spokesman for the employee-representatives at the Steubenville works of the Wheeling Steel Corporation?

Mr. MITCHELL. Right.

The CHAIRMAN. And accompanying you is the general chairman, Edward Kirkpatrick?

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. And Don Starr?

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. He is an employees' representative; William Evans, an employees' representative, and S. E. McCoy, substation operator and employees' representative?

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. You are to speak for the entire group?

Mr. MITCHELL. Yes.

The CHAIRMAN. And your full name, you say, is Guy E. Mitchell?

Mr. MITCHELL. Right.

The CHAIRMAN. And you are by occupation a roller?

Mr. MITCHELL. A cold roller; yes.

The CHAIRMAN. How many employees are there in the Steubenville works of the Wheeling Steel Corporation?

Mr. MITCHELL. About 5,000 at the present time.

The CHAIRMAN. And what is the form of your employees' organization?

Mr. MITCHELL. How many representatives?

The CHAIRMAN. What is the form; what is it called? What is the name of your employees' organization?

Mr. MITCHELL. The representative plan.

The CHAIRMAN. You are called the "representative plan"?

Mr. MITCHELL. Yes.

The CHAIRMAN. And how many of the employees belong to it?

Mr. MITCHELL. We have 25 representatives. All of our employees belong to it, because they are eligible to participate.

The CHAIRMAN. When did you have your last election?

Mr. MITCHELL. Last May.

The CHAIRMAN. And you and those who are here with you were elected in that election?

Mr. MITCHELL. Yes.

The CHAIRMAN. You may proceed with your statement.

STATEMENT OF GUY E. MITCHELL, EMPLOYEES' REPRESENTATIVE, STEUBENVILLE, OHIO

Mr. MITCHELL. The reason that I have come to Washington is to ask this committee to hear me, as I wish to give them some information which I believe they would be interested in.

I am here at my own request, for I have in the past been a member of several labor unions, and for the past 11 years I have been a member of the employees' representation plan. At the present time I am one of the employees' representatives of the new process de-

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partment, which rolls auto-body sheets and makes sheets for other uses. I have been an employees' representatives for 7 years; I have served on the ways, rules, and means committee of the employees' representatives which had charge of the nomination and election of the employees' representatives of the Steubenville works.

The CHAIRMAN. How long has this organization been in existence?

Mr. MITCHELL. Since 1921 in our plant.

The CHAIRMAN. And you have been a representative during 7 of those years?

Mr. MITCHELL. During 7 of those years; yes, sir.

There are 5,000 men employed at this works, and we have 25 employees' representatives.

We held our nomination on May 28, 1934; and on this date there were about 3,745 men working and there were 3,468 ballots cast for a percentage of 92.6 percent of the men who were working. On June 1, 1934, we held our election of the men who were nominated. There were 4,077 men working, as business had picked up some; and there were 3,908 votes cast, or an average of 95.8 percent voting.

The employees' representation plan was started in 1921 and has been in operation continually since that time. We hold our meetings monthly. We have a chairman and a secretary, and we have 13 committees, such as rules, ways, and means committee, which has to do with the rules of the representation plan; and a committee on wages, piecework, and bonuses and tonnage schedule; a committee on practice methods in economy; a committee on health and work sanitation; pensions and relief; athletics and recreation; housing, domestic, economic, and living conditions; continuous employment; and conditions of industry.

We have these committees functioning, and they have handled 116 cases the past year that we have a record, of which more than 90 percent of these cases were settled in our favor; some were compromised, a few were withdrawn, and a few of these cases were denied. There are a great many cases that are handled directly between the representatives and their department foremen and superintendents which do not reach our meetings and of which there are no records. I am sure that any employees' representative will bear me out in this statement.

We employees of our plant feel that we are entirely satisfied under our present plan of representation, and we feel that the passage of the Wagner bill would deny us our selection of the representation plan which we choose to have.

We do not wish to have any collective-bargaining agency forced upon us, which we feel is not fitting for ourselves; and as we are entirely satisfied with our present plan of representation, which has been functioning satisfactorily for more than 14 years, we are opposed to accepting another agency in its place.

We feel that we employees ourselves should handle our own problems with our management, and we are opposed to having our present plan of representation declared illegal. We feel if the Wagner bill passes it will take our own personal liberty away from us.

Having been a member of labor unions in the past, I cannot see any benefit from them at this time, as we are working in har-

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mony at our plant. If a labor union is forced upon us, it will cause dissension among our employees, which number approximately 5,000 at the present time. We wish to make a protest against the passing of the Wagner bill as it is drawn up at this time.

The CHAIRMAN. Senator Wagner would like to ask you some questions.

Senator WAGNER. To what provisions of the bill particularly do you object?

Mr. MITCHELL. The provision in your bill, as I see it, would force an agency upon us that would bring outsiders in to tell us whom we should elect and whom we should not elect.

Senator WAGNER. What provision of the bill do you refer to?

Mr. MITCHELL. Your National Labor Board.

Senator WAGNER. Well, what do you mean—what provisions of the bill do that?

Mr. MITCHELL. Your National Labor Board that your bill would designate.

Senator WAGNER. They can only act within the powers conferred upon them under this bill. I would like to have you point out to me the provision of the bill which does what you claim it does, in destroying the freedom of the employees.

Mr. MITCHELL. Your bill says that the National Labor Board will be appointed to supervise all elections, does it not?

Senator WAGNER. No; not unless there is a question as to who represents the workers. Then there may be, under the supervision of the Board, if a dispute arises between the workers and the management as to who represents the workers; and if the National Labor Board cannot determine that from an election that has been held, they may have an election under the supervision of the Government, where each man expresses his choice.

Mr. MITCHELL. We have that now.

Senator WAGNER. Well, all right then, this bill does not interfere with that. You said the passage of this bill would destroy your union.

Mr. MITCHELL. Absolutely. We have no union, Mr. Wagner.

Senator WAGNER. Or your organization. What provisions of the bill would do that? Who prepared this statement?

Mr. MITCHELL. Your bill declares our representation plan illegal.

Senator WAGNER. No; it does not do anything of the kind. What provision of the bill does that?

Mr. MITCHELL. As I get it, your bill would declare our plan illegal.

Senator WAGNER. Well, what provision of the bill?

Mr. MITCHELL. Because you call it a company union, and we have no company union.

Senator WAGNER. I am not talking about a company union at all. I am asking you what provision of this bill affects your organization? You do not know, do you? Who prepared this statement?

Mr. MITCHELL. I prepared that, myself.

Senator WAGNER. That is all your own language?

Mr. MITCHELL. Absolutely; yes, sir.

Senator WAGNER. Then upon what do you base your statement that this will destroy your organization—the passage of this bill?

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Mr. MITCHELL. Because, as I understand and interpret your bill, it would declare our plan illegal.

Senator WAGNER. Well, where? What provision of the bill?

Mr. MITCHELL. Does it not do away with the so-called "company unions"?

Senator WAGNER. It does not say anything about a company union.

Mr. MITCHELL. No; because we have no company union.

Senator WAGNER. It simply attempts to preserve to the worker the freedom of choice, freedom from any pressure, economic or otherwise, of the employer, and if your plan is based upon the free choice of the worker, there is nothing in this bill that interferes with it.

Mr. MITCHELL. It always has been. Our plan always has been.

Senator WAGNER. I say, if it is based upon the free choice of the workers, then there is nothing in this bill that can interfere with it. If it does not represent the free choice of the workers, you admit it ought not to exist?

Mr. MITCHELL. Absolutely.

Senator WAGNER. Are you paid by the management?

Mr. MITCHELL. I am paid $6 per meeting.

Senator WAGNER. Well, whatever it is, you are being paid?

Mr. MITCHELL. Yes, sir.

Senator WAGNER. And under your constitution, does it limit the representatives to be elected to employees of the particular plant?

Mr. MITCHELL. No, sir; not necessarily; you can elect an outsider.

Senator WAGNER. You can elect an outsider?

Mr MITCHELL. Absolutely.

The CHAIRMAN. This bill makes illegal an organization of employees dominated by the employer, and I judge from what you say that you fear the board, to be set up under this bill, may call an organization like yours a "dominated" employees' organization.

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. That is your fear?

Mr. MITCHELL. Yes.

The CHAIRMAN. As Senator Wagner has said, if your employees' organization is voluntary, free from control or influence or direction by the employers, there is nothing in this proposed legislation to interfere with that; and the Board that is set up would be performing an illegal act if it attempted to declare your organization illegal. That is my judgment, and it is your judgment, Senator Wagner?

Senator WAGNER. And if the Board is wrong, there is a review in court.

The CHAIRMAN. Of course, if your employers, directly or indirectly, in the elections seek to influence the employees; if your employers directly or indirectly seek to control by payments made to the representatives or favors extended to them, that would be called a "dominated" organization.

Mr. MITCHELL. Yes.

The CHAIRMAN. And that would be found illegal.

Mr. MITCHELL. Yes.

The CHAIRMAN. But I judge that your fear and that of others is that the Board might in its desire to give preference to trade unions seek to declare unions or organizations such as you have illegal?

Mr. MITCHELL. Yes.

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The CHAIRMAN. I think the committee will, in the drafting of this bill, if it is not already included, make it very clear that the organizations that are free from domination, referring now to employees' organizations, shall not be subjected to any such ruling by the Board that is set up here.

Mr. MITCHELL. Mr. Chairman, as you realize, our plan did not jump up in the last 2 years. Our plan has been in force for some time.

The CHAIRMAN. I noticed that. That is why I asked you about that specially.

Mr. MITCHELL. We have worked in harmony all these years, and I will say that in our plant we have never had any trouble.

The CHAIRMAN. Of course, there is a suspicion attached to those organizations that have come into existence in the last 2 years, under the belief that it was an effort on the part of the employers to control the kind of organization the employees would have, and I personally feel, and I think Senator Wagner does also, that there is nothing objectionable to the employers asking their men to form an organization for collective-bargaining purposes, in view of the declaration in 7 (a). But this bill and the whole purpose of section 7 (a) is to permit the employees to be free, not to be compelled to have any kind of organization they do not want, and not to have thrust upon them any organization that their employers may prefer; that they should have absolute choice in the kind of organization; absolute choice in the election of their representatives; and that they should be obliged to confer with the representatives and not shut the door in their faces when they come with grievances to them.

Mr. MITCHELL. As you know, the employment in our plant is composed of a cosmopolitan population. I suppose that in the 5,000 men that we have on our pay roll you will find every known nationality on the globe.

The CHAIRMAN. Of course, the Government is not responsible for that.

Mr. MITCHELL. Absolutely not.

The CHAIRMAN. And if there are elements within that cosmopolitan group of employees who are disorderly and unreasonable, it is your employers' fault in hiring them.

Mr. MITCHELL. Certainly; I agree with you.

The CHAIRMAN. And in some instances it appeared before us that the employers have deliberately sought to employ people with different languages and different nationalities, with the idea they could be better controlled; but I think most of them have found that it was an unfortunate experiment. I do not suppose there is any group of workmen who are fairer or better for an employer to deal with than what we call the American stock, which has not inherited any foreign traditions or customs, which is filled with the real American spirit, and which desires without disturbances or without force to assert its rights with its employers; so that this cosmopolitan group of which you speak is not of our making.

Mr. MITCHELL. No. I agree with you. I agree with you.

The CHAIRMAN. I think we understand your position, and you simply want us to allow your men to go along and have the kind of organization they want.

Mr. MITCHELL. That is right.

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The CHAIRMAN. And you think, for your own purposes and uses, this plan is serving the purpose satisfactorily, and you do not want to be disturbed.

Mr. MITCHELL. That is it, absolutely; yes, sir.

Senator WAGNER. Have you a collective-bargaining agreement written out, with all of the terms of employment, the amount of wages to be paid, and all of that written out and signed by both sides?

Mr. MITCHELL. No; Senator Wagner.

Senator WAGNER. You have not?

Mr. MITCHELL. Our wages are based upon the different positions that the men hold.

Senator WAGNER. I understand that, but I am asking you whether you have any written agreement about that.

Mr. MITCHELL. No. If there is anything that comes up, that any man in the department feels that he is being slighted in any way, we take that up with the department head; and if he feels that the man is entitled to more money, he gets it.

Senator WAGNER. Supposing the workers whom you represent think they ought to receive an increase in salary or an improvement in some of their conditions; do they come to you?

Mr. MITCHELL. Yes, sir. We are the representative in their department.

Senator WAGNER. But supposing the workers generally in your plan feel that they ought to have better economic conditions, they ought to have an increase in wages; do they present their claims to you?

Mr. MITCHELL. They present the claims to the representative of their department.

Senator WAGNER. And then you get together?

Mr. MITCHELL. And that representative takes it to the superintendent of that department.

Senator WAGNER. Supposing there are three or four of you in the different departments, all wanting an increase in wages?

Mr. MITCHELL. We take it to our own individual superintendent. We have a superintendent for every department in our plant.

Senator WAGNER. Does he represent the management in that?

Mr. MITCHELL. No; he represents his own department, and we represent the men of that department.

Senator WAGNER. How do you get it before your employer?

Mr. MITCHELL. In case he turns it down, we take it to the management.

Senator WAGNER. Supposing the management turns it down?

Mr. MITCHELL. We take it to the president of the company.

Senator WAGNER. And supposing he turns it down?

Mr. MITCHELL. We have direct action, to go to the Secretary of Labor of the State.

Senator WAGNER. I see.

Mr. MITCHELL. And if they turn it down, we have direct action to come to the Secretary of Labor of the United States. That is in our bylaws.

Senator WAGNER. In your bylaws?

Mr. MITCHELL. Yes, sir.

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Senator WAGNER. Supposing the men feel they are not being fairly treated by any of these parties, as to wages, what happens?

Mr. MITCHELL. What redress have they?

Senator WAGNER. How?

Mr. MITCHELL. What redress have they?

Senator WAGNER. I am asking you.

Mr. MITCHELL. They have gone to the highest tribunal in the United States, when they come to the Secretary of Labor, have they not?

Senator WAGNER. And if it is not adjusted there, then that is the end of it; is that right?

Mr. MITCHELL. They can strike, close the plant down—which is very unfortunate for any plant.

Senator WAGNER. Have you a fund with which to conduct a strike, if you had a strike?

Mr. MITCHELL. No, sir. Every man is on his own initiative.

Senator WAGNER. All right.

The CHAIRMAN. You have been elected and reelected seven times?

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. How many times have these other men been elected?

Mr. MITCHELL. One of these men, 2 years; another, 6; another, 2; and this man here, I think, ever since the organization started.

The CHAIRMAN. I think it is fair to assume that you must be somewhat alert in protecting the rights of the employees, or they would not reelect you.

Mr. MITCHELL. Well, I will tell you, Mr. Chairman, we go along in harmony in our plant. I am not speaking of other plants, understand; I am speaking of our own plant, alone.

The CHAIRMAN. But there is an opportunity, if any one of your men is suspected of being an employer's man and lacks the necessary alertness in his efforts to protect the rights of the employees, to defeat his reelection?

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. The men can do it?

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. And would do it?

Mr. MITCHELL. Absolutely. There is no coercion in our elections whatsoever.

The CHAIRMAN. Now, the other gentlemen who accompany you, I assume, would express the same sentiments if called to the witness stand. You are in accord with the views expressed by your chairman? All right. We thank you all.

EMPLOYEE REPRESENTATIVES, SPANG CHALFANT & CO., INC., PITTSBURGH, PA.

The CHAIRMAN. Next on our list are the employee representatives of Spang Chalfant & Co., Inc., of Pittsburgh, Charles Davis and Max Mursch. Is this Mr. Davis?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Your full name?

Mr. DAVIS. Charles Davis.

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The CHAIRMAN. You are by occupation a machinist?
Mr. DAVIS. Yes, sir.
The CHAIRMAN. And employed at Etna, Pa., in the plant of Spang Chalfant & Co., Inc.?
Mr. DAVIS. Yes, sir.
The CHAIRMAN. And you are one of the representatives and treasurer of the employees' representative organization?
Mr. DAVIS. Yes, sir.
The CHAIRMAN. And you have been selected to speak for them?
Mr. DAVIS. Yes, sir.
The CHAIRMAN. Accompanying you is Max Mursch?
Mr. MURSCH. Yes, sir.
The CHAIRMAN. You are a pipe welder?
Mr. MURSCH. Yes, sir.
The CHAIRMAN. You are also a representative?
Mr. MURSCH. Yes, sir.
The CHAIRMAN. How many representatives have you?
Mr. DAVIS. We have nine.
The CHAIRMAN. How many employees are there in your plant?
Mr. DAVIS. There are 1,200.
The CHAIRMAN. You may proceed.

STATEMENT OF CHARLES DAVIS, REPRESENTATIVE AND TREASURER OF THE EMPLOYEES' REPRESENTATIVES, ETNA, PA.

Mr. DAVIS. I have been sent to Washington with my fellow representative, Max Mursch, to present the objections of the employees of the Etna plant of Spang Chalfant & Co., Inc., to the Wagner bill, S. 1958.

Our present plan of employees' representation was put into effect in June 1933, when the first annual election was held to vote for the plan and elect representatives.

The CHAIRMAN. What year was that?

Mr. DAVIS. In 1933. The election was by secret ballot with no coercion whatever by the management. We have found the present plan to meet our requirements and have been accorded every courtesy and attention in every case brought before them for adjustment.

At our last annual election, in June 1934, 92 percent of the employees cast ballots, and had the whole force been at work we would no doubt have polled a larger vote.

We are paid a flat rate for the meetings we attend, through our treasury. A certain sum is contributed to the fund in our treasury by the company, monthly. The election expenses are paid from this fund also.

The CHAIRMAN. What is that?
Mr. DAVIS. The election expenses.
The CHAIRMAN. What is that fund? How much is contributed by the company each month?
Mr. DAVIS. The company contributes $25 each month.
The CHAIRMAN. Each month?
Mr. DAVIS. Yes, sir.

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The CHAIRMAN. So, in the course of a year they give you $300 for the expenses of the one election which you hold, and as compensation to be divided among the representatives?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Is the time that you lose from your work when you are participating in the business of collective bargaining deducted from your wages?

Mr. DAVIS. No, sir.

The CHAIRMAN. You get that also, besides this $300?

Mr. DAVIS. No; it is not deducted. We do not get paid for that, only out of the treasury.

The CHAIRMAN. Yes; I meant that.

Mr. DAVIS. Yes.

The CHAIRMAN. So that if you are out for 2 or 3 hours at the end of the week, you have a deduction for the time you are out, but you get every month or every year a portion of this $300?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Is that the way you are paid?

Mr. DAVIS. Yes, sir. We have a flat rate of $2 every meeting.

The CHAIRMAN. You get $2 every meeting?

Mr. DAVIS. We get $2 every meeting; yes, sir; once a month.

The CHAIRMAN. Once a month?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. So each of you get about $24 a year?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. The meeting is at night not during the day time?

Mr. DAVIS. In the evenings, after working hours.

The CHAIRMAN. Do some of the men have to leave their work at night to attend these meetings?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. So some are on night shifts and have to leave their work?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Proceed.

Mr. DAVIS. If the balance in this fund is not sufficient for election expenses, when necessary, the company pays in the amount necessary.

We object to the interference from the outside coming in to run our affairs, as we feel we know best the conditions of our employment and can treat for our best interests for ourselves with our company management. We have had matters pertaining to wages, hours of employment, and plant working conditions up before our representatives committee, and each and everyone has been adjusted to our satisfaction.

Senator WAGNER. Did you prepare that statement yourself?

Mr. DAVIS. Yes, sir.

Senator WAGNER. Are you being paid for coming here?

Mr. DAVIS. My expenses are paid down here; yes.

Senator WAGNER. By whom?

Mr. DAVIS. By the company. We feel that we were coming down here, and that the firm should defray our expenses.

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Senator WAGNER. You think that the firm owes you your expenses for coming down here?

Mr. DAVIS. Well, in a way; yes.

Senator WAGNER. You think you are saying something for their benefit?

Mr. DAVIS. Well, no; not all for their benefit—for our own benefit.

Senator WAGNER. Well, you said you thought the company ought to pay you for coming down here.

Mr. DAVIS. Well, they should reimburse us for coming down here, because we could not pay our own way down.

Senator WAGNER. How?

Mr. DAVIS. We could not pay our own way down.

Senator WAGNER. What particular provisions of the bill do you oppose?

Mr. DAVIS. What we are opposed to is anybody coming in from the outside, trying to run our plant.

Senator WAGNER. What is there in this bill that forces somebody from the outside upon you?

Mr. DAVIS. The way we interpret some of the bill, it is that if the bill is passed through we believe that the company or outside union would be forced onto us.

Senator WAGNER. Well, how?

Mr. DAVIS. By election from the Labor Board.

Senator WAGNER. You mean that if all of their workers have a chance to express themselves free from any suggestion or anything from the employer, that they would be apt to elect an outside organization to represent them?

Mr. DAVIS. I do not think so.

Senator WAGNER. Then what is it that you fear?

Mr. DAVIS. Just as I say, we fear from the outside anybody being sent in, being forced onto us.

Senator WAGNER. There is nothing in this bill except to give the worker a free choice to vote as he wishes, for whatever method of representation he desires, in collective bargaining. Now, could you conscientiously object to that, to a worker having a free choice to vote for whomever he wants to vote for to represent him?

Mr. DAVIS. Well, in a way I would.

Senator WAGNER. You are opposed to that, are you?

Mr. DAVIS. I would not want anybody outside to come in and run my affairs in the shop.

Senator WAGNER. That is not what I am asking you. I am asking you whether you are opposed to the protection given to the worker, so that when he casts his ballot for a representative, it shall be his free choice.

Mr. DAVIS. That is what we have—his free choice.

Senator WAGNER. Well, if you have, there is nothing in this bill, I am saying, that interferes with that. I am trying to find out what particular provision of the bill you oppose.

Mr. DAVIS. One particular provision in it I believe is that the majority rule—that is, the 51 percent of the men at the mill vote for an outside labor union, then the other 49 are forced into it.

Senator WAGNER. Well, I do not know. Whoever told you there was any such provision in this bill has not given you an accurate

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statement. Where do you get your advice from? Who has given you advice as to what the bill means?

Mr. DAVIS. Nobody has been giving me any advice.

Senator WAGNER. Have you studied the bill carefully yourself?

Mr. DAVIS. I have looked through the bill, but I have not studied it really thoroughly, but I just picked out the point in the bill.

Senator WAGNER. I thought so. Well, what particular provision do you mean?

Mr. DAVIS. I would not just remember what it was.

Senator WAGNER. Would you know if I gave you the bill?

Mr. DAVIS. Oh, I probably would know some of it; probably I would.

Senator WAGNER. Let us have the bill, because I want to see where that is.

Mr. DAVIS (referring to S. 1958). I never saw the bill put up in this form before. The way I got my information was through the papers.

Senator WAGNER. Oh, through the newspapers?

Mr. DAVIS. Yes, sir.

Senator WAGNER. Well, is that always accurate, you think?

Mr. DAVIS. Supposed to be.

Senator WAGNER. It depends on who writes the story, does it not, somewhat?

Mr. DAVIS. I guess it does.

Senator WAGNER. I mean the editorial. I am not speaking of the news items. You cannot find it, can you, off-hand?

Mr. DAVIS. No; I cannot, just now.

Senator WAGNER. Well, if you find it at any other time later, will you communicate with me?

Mr. DAVIS. Surely.

The CHAIRMAN. And the other witness I suppose desires to confirm the opinions expressed by the witness who is on the stand now?

Mr. MURSCH. Yes.

The CHAIRMAN. And both may be excused.

EMPLOYEE REPRESENTATIVES, AMERICAN ROLLING MILL CO., BUTLER PLANT, BUTLER, PA.

The CHAIRMAN. The representatives of the employees of the American Rolling Mill Co., the Butler plant, at Butler, Pa., will come forward, please. Will you find chairs, gentlemen.

Mr. Colley, what is your full name?

Mr. COLLEY. Robert F. Colley.

The CHAIRMAN. Where do you reside?

Mr. COLLEY. Butler, Pa.

The CHAIRMAN. What is your position?

Mr. COLLEY. A roller.

The CHAIRMAN. With the Butler plant?

Mr. COLLEY. Yes.

The CHAIRMAN. Are you a representative of the management or of the employees?

Mr. COLLEY. I am a representative of the employees.

The CHAIRMAN. And you desire to speak for them?

Mr. COLLEY. I desire to speak for them.

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The CHAIRMAN. And accompanying you there are the following: Michael Enright, vice chairman; R. M. Miller, secretary; F. E. Davis, clerk; M. L. Spinneweber; S. R. Zeigler; Raymond Keefer; J. C. Martin; William Schuck; and Maurice Fewkes.

You apparently all represent different trades or different department of work in this Butler plant.

Mr. COLLEY. That is right.

The CHAIRMAN. Roller, time-study man, checker, millwright, machinist, crane operator, clerk, heater, and electrician; and you are chairman of the representatives, and are all of these elected representatives of the employees?

Mr. COLLEY. They are.

The CHAIRMAN. How many have you altogether?

Mr. COLLEY. We have 63.

The CHAIRMAN. And these represent those 63?

Mr. COLLEY. No; no. They are the selection of the 63 men.

The CHAIRMAN. To appear here?

Mr. COLLEY. To appear here before your committee.

The CHAIRMAN. Have you a statement you desire to submit to the committee?

Mr. COLLEY. I have.

The CHAIRMAN. You may proceed to present it.

STATEMENT OF ROBERT F. COLLEY, EXECUTIVE CHAIRMAN OF THE EMPLOYEE REPRESENTATIVES OF THE BUTLER, PA., WORKS OF THE AMERICAN ROLLING MILL CO.

Mr. COLLEY. Mr. Chairman and gentlemen of the committee, my name is Robert F. Colley. I am executive chairman of the employee representatives of the Butler, Pa., works of the American Rolling Mill Co. In our plant we have approximately 2,000 men who are represented, for the purposes of collective bargaining, by 21 committees of 3 men each.

We are appearing before you today as the result of a resolution passed by these 63 men on March 21, 1935, directing that a delegation appear before your committee to present the views of our organization on the National Labor Relations Act.

We are opposed to this bill for many reasons. We believe that this legislation, if passed, would deprive us of what we consider to be our rights in dealing with our employer as we see fit. For many years before, and since the N. I. R. A. we have enjoyed collective bargaining through employee representation. By this means we long ago learned the advantages to the working men to be able to deal with our management in the spirit of friendship and good will, not influenced by any third party who would not understand our mutual interests.

We are convinced, through rulings already made by the present National Labor Board, that this bill would eventually result in outlawing our present plan of employee representation, which we employees wrote and in which we have absolute confidence. We believe that the very fact that we employees and the management are in such close harmony on matters of mutual concern that any labor

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board will be influenced to believe that we are company dominated. This, of course, would outlaw us.

We fear the possibility of the "closed shop" which is definitely anticipated and provided for in this bill. Our organization as a whole positively objects to this provision. Many of us in our younger days have had the experience of being directed by paid executives of national labor unions. We have been called out on strikes when we wanted to work; have had our hard-earned funds misappropriated and have been threatened and coerced by the very people who posed as our friends. This sort of tyranny will never occur when we are allowed to deal directly with sane management.

In our company and many others with which I am acquainted, we workmen and our families are provided with such benefits as group life insurance, wage incentives, sick-and-death benefits, free medical service, parks and playgrounds, and, above everything else, the good will and respect of our supervision and management. Every one of these benefits are over and above a fair and considerate wage and represent the kind of thing that makes life worth living for the laboring man. These things have come about simply because management and men have been able to consult together, unhindered by some third party whose stock in trade is to make trouble.

The framers of this legislation either do not understand this or do not want to understand it. Certainly they have had no practical experience in modern industry. We suspect that their real interest is to unionize our plants, which the vast majority of American workmen have rejected for the past 30 years.

This act puts the Federal Government's stamp of approval on the right to strike. We have no particular quarrel with this viewpoint only as strikes affect us as members of the general public. They cost the working man money the same as anyone else. The passage of this bill will result in a great increase in strikes.

We also seriously object to organized labor's coercive tactics now being used on Congress through the threat of widespread strikes if this bill is not passed.

Let me point out from personal experience that the tactics being used by the American Federation of Labor to secure the passage of this measure are exactly the same ones used against the individual to get him into the union and to control him after he is in.

As an example of the ability of labor unions to manage their own affairs, look at the internal strife now prevailing in the Amalgamated Association of Iron, Steel, and Tin Workers. Is it any wonder that the vast majority of steel workers do not want to be represented by this organization? And if it is so necessary that the thousands of workers in industry be governed by this act, why is not it also applied to the employees of the Government and of labor unions?

In the final analysis, what we workers and our families pray for is recovery, and not so much of reform, and we need it now. We want work and plenty of it, and to be allowed to perform it under the best possible conditions. We believe our present form of employee representation is the best possible method of securing these conditions and we arrive at this conclusion after having tried both methods. We can't get the best there is to be had out of life if we go about our work with a chip on our shoulder. Employee representation is the

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modern method of collective bargaining. It is sound because it is based on the theory of mutual interest between management and men.

We firmly believe that the day this bill becomes the law of the land, if it does, that day will be the beginning of far-reaching conflict. It is within the powers of this committee to avoid that, and we strenuously oppose being legislated into trouble.

Senator WAGNER. Are your expenses paid for coming down here?

Mr. COLLEY. They are.

Senator WAGNER. By the employer?

Mr. COLLEY. They are.

Senator WAGNER. And are you paid for representing the workers?

Mr. COLLEY. I am not, other than what is provided in our plan—the time necessarily lost. If I have work to go to and I am working at this employee representation I get paid, but if my time lapses——

Senator WAGNER. You get paid, not by the men you represent but by the management with whom you are to negotiate for the men, is that right?

Mr. COLLEY. Well, now, when you put the question that way——

Senator WAGNER. All right, I will withdraw that question. You are paid for this time which you devote to representing the workers by the management?

Mr. COLLEY. Yes.

Senator WAGNER. That is what I want to know.

Mr. COLLEY. Well, there is nothing wrong about that that we can find.

Senator WAGNER. All right, I am just asking you the fact; I am not characterizing it as either right or wrong. I am just asking you the fact whether that is so or not.

Under your plan which you have, the workers under your constitution cannot vote for an outside person or organization to represent them?

Mr. COLLEY. Oh, yes.

Senator WAGNER. Can they?

Mr. COLLEY. Yes.

Senator WAGNER. They have the right?

Mr. COLLEY. They have the right. It is not written in there, but I have told them at the general meetings, at the last meeting.

Senator WAGNER. Is that your constitution?

Mr. COLLEY. This is.

Senator WAGNER. May I see that?

Mr. COLLEY. At the last general meeting we had, at the election in December of last year, I told them at that time that it was up to them to decide to take that clause out of there, and they did not want it taken out, and they said, "This is our form of collective bargaining—leave it in." And I made it plain to them at that time, if those men wanted to vote for Mike Tighe we could not stop them; we could not stop him from being elected, and we would have to seat them; that section 7(a) is also in there, and that any man that they would vote for would have to be seated regardless of whether he was a member there or not. Of course, the bylaws, there, or the rules, are specific that a man should be an employee for 1 year, but we are not holding them to that.

Senator WAGNER. That is, however, what the constitution provides?

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Mr. COLLEY. That is what the constitution says. It is within the power of this body to change it, but they have not changed it, and I have told them that it should be changed, but they seemed to think not.

Senator WAGNER. Does not the management have to agree to a change?

Mr. COLLEY. Certainly. We have got to deal with them.

Senator WAGNER. I mean, before you can make this change.

Mr. COLLEY. No, no; they have got nothing to do with that.

Senator WAGNER. They have not? You have a provision in here that your present plan shall remain in effect during the term of the National Industrial Recovery Act, "and thereafter may be terminated by the management or by a majority of the employees upon 3 months' notice"; is that right?

Mr. COLLEY. That is right.

Senator WAGNER. So that when the National Recovery Act terminates, your organization terminates; is that right?

Mr. COLLEY. No. No; we raised that question with the management before ever we came. There was some question by the men on the committee in regard to that one clause. Now, we have had this form of employee representation in our plants since the American Rolling Mill took them over, and the American Rolling Mill Co. has carried employee representatives since 1904, and we have reason to believe that they will continue to carry them after that.

Senator WAGNER. Mr. Witness, these outside considerations do not interest me for the moment. I am thinking of the constitution which binds your organization. I am asking you a very simple question, and you can answer it either "yes" or "no." Is it true that under the constitution under which you are operating provides as I have indicated? I will read it, that is the simplest way, so that we will both be right.

Mr. COLLEY. I know what is in there, there is no use reading it, and we all know it is there.

Senator WAGNER. All right. Then it is only for the period of the National Recovery Act?

Mr. COLLEY. What led you to believe, Senator Wagner, that at the termination of the N. R. A., if the company has not served notice on us, that as soon as that is done you are done with us?

Senator WAGNER. I am just reading:

> This plan shall remain in effect during the term of the National Industrial Recovery Act and thereafter may be terminated either by the management or by a majority of the employees upon 3 months' notice to the other.

Mr. COLLEY. That is right.

Senator WAGNER. So that if the management wants to terminate this plan they can upon 3 months' notice after the Recovery Act terminates.

Mr. COLLEY. That is right.

Senator WAGNER. That is, after June 16, 1935.

Mr. COLLEY. I understand what you mean. Assuming that they do terminate it, we have got 64 men there, and if the company wants to terminate it we can go ahead and reorganize and go out on our own and collect dues among the men and form our own independent union. There is nothing to stop us from doing that.

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Senator WAGNER. But what I wanted to bring out, if you do not mind, was that your organization exists really at the will of the company, of the management. Am I wrong about that?

Mr. COLLEY. Well, they encouraged us to have it, from the time they took over the plant, and they want employee representation. We do not deny that.

Senator WAGNER. Exactly. That is what I wanted to have you state.

Mr. COLLEY. They seem to think that it is the modern method of dealing with men.

Senator WAGNER. Yes.

Mr. COLLEY. They have the right to have the man's viewpoint.

Senator WAGNER. Yes.

Mr. COLLEY. And as long as they have no objection to dealing with us this way, and we are satisfied with this plan, why not go on?

Senator WAGNER. I understand; I have heard you say that, of course, but it was suggested by the company, and did the company draft this constitution?

Mr. COLLEY. No.

Senator WAGNER. Who drafted it?

Mr. COLLEY. We, the employees, drafted that. Now, maybe all of that is patterned after the old constitution, but the way we got about to draft that was when the men all got together, they decided to let every man in the mill have a part in it, and they put up a box in the clock house. Any man that had any suggestions whatever in the plant put his suggestions in that box, and we got together and picked them out and went over them, and picked out what we thought would be beneficial to our organization, and those that were not, it was voted on to cast them in the discard, and the plan was given to every employee for 6 months before he was asked to vote whether it was all right or whether it was not.

Senator WAGNER. Where did he vote? In the plant?

Mr. COLLEY. He did, by a secret vote, Senator.

Senator WAGNER. Let me ask you why, if you wanted to have an effective organization to represent the workers, why did you put a provision in your own constitution that the management might dissolve your organization at any time?

Mr. COLLEY. I do not quite see the point in asking that question, Senator. I have always been raised to believe that we ought to give the other man the same rights that we ask for ourselves, and that is the particular reason for having that in there.

Senator WAGNER. You mean it is your view that the management should have control over the workers' organization?

Mr. COLLEY. Oh, no; no.

Senator WAGNER. But do they not, under this constitution?

Mr. COLLEY. Certainly they have it under that constitution.

Senator WAGNER. Do they decide whether you can continue or not?

Mr. COLLEY. But we have there the right to remove that.

Senator WAGNER. I know you have, but suppose you wanted to continue it?

Mr. COLLEY. All right, we will continue it.

Senator WAGNER. No; the management will say to you, "No; we choose to terminate it."

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Mr. COLLEY. Well, we can still continue it. We can force it.

Senator WAGNER. You can?

Mr. COLLEY. What is there to stop us from forcing it?

Senator WAGNER. That is all right. How are you going to force it?

Mr. COLLEY. We can go clean through an arbitration, and if we can do nothing there, we can stop. We have every bit as much power as any other organization.

Senator WAGNER. All right, that is fine. Tell me what provision of the bill here destroys your organization?

Mr. COLLEY. It is sort of confusing, Senator. You know I am only a working man, not an attorney, and maybe I misunderstand some of these clauses.

Senator WAGNER. Did you draft this statement you made?

Mr. COLLEY. Yes; that one I just read?

Senator WAGNER. Well, you are a very intelligent person, because that is a very able paper.

Mr. COLLEY. Now, the men particularly raised this question, when we raised this matter of our closed shop. Now, maybe I am wrong in looking at this section. This is section 8, paragraphs 3 and 4. As we read it, as we workingmen understand it—now, I may be wrong—it definitely gives the majority of the men in the plant, 51 percent of the men in the plant who belong to an outside organization, or as you call it "labor union", the right to close that shop; if the management will agree to it, the 49 percent of us would be in that, on those recommendations, and we would fall by their decision.

Senator WAGNER. Well, do you not think the management can do that today, if they want to?

Mr. COLLEY. Not very well.

Senator WAGNER. Have you not a closed shop, in a way, here; I mean, certainly so far as representation is concerned? You are limited under this constitution to those who are employed by the management. You do not permit an outsider to represent the workers, under your constitution?

Mr. COLLEY. No; any outsider can represent us at all that can get in there and get votes, and there is nothing to stop him, but they have never made any effort to do that.

Senator WAGNER. What State are you from?

Mr. COLLEY. Pennsylvania.

Senator WAGNER. In Pennsylvania closed shops are legal, are they not?

Mr. COLLEY. That is right.

Senator WAGNER. Therefore under the Pennsylvania statute today your management can make an agreement with the majority of your workers now for a closed shop?

Mr. COLLEY. Well, we think that a little encouragement on the part of the National Government would bring about a lot more labor organizers into our group, to try to do the same thing as was repeated in 1919. We see no sense in it.

Senator WAGNER. They cannot do anything here except by a majority of your workers, the men that elected you, voting upon it.

Mr. COLLEY. Right.

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Senator WAGNER. Therefore, you have majority rule now in your plant?

Mr. COLLEY. That is right.

Senator WAGNER. You represent the majority?

Mr. COLLEY. That is right.

Senator WAGNER. Now, there is not anything there that cannot be done today in your State, because the management must first agree to it. In effect, it is a limitation, and then it must be agreed to by a majority of your workers. Today, in your State, your management could enter into a closed-shop agreement without the consent of the majority of your workers. This is a greater protection than you have today in the law, because now, before that closed-shop agreement can be forced upon you, a majority of the men you represent must agree to it, in addition to the management, which is not the case now in Pennsylvania, because the management can agree with one leader, with you, for a closed shop.

Mr. COLLEY. Well, that may all be true.

Senator WAGNER. So that this is restrictive. This is in favor of the workers, so that it cannot be imposed upon them except a majority agree to it; and it protects the employer, because there is no closed shop unless he says yes.

Mr. COLLEY. All right.

Senator WAGNER. It is an absolute agreement.

Mr. COLLEY. Could I ask you a question, Senator?

Senator WAGNER. Yes.

Mr. COLLEY. Well, if this is such a good piece of cake, why is it that in your definitions, here, we do not want to hand it out to the civil-service workers and the railway labor men?

Senator WAGNER. I will give you an answer to that.

Mr. COLLEY. I would like to have it.

Senator WAGNER. I will give you an answer.

Mr. COLLEY. Just the reason, if you know.

Senator WAGNER. Will you wait a minute?

Mr. COLLEY. Yes, sir.

Senator WAGNER. I will give you an answer.

Mr. COLLEY. All right.

Senator WAGNER. And I think it will convince you. Do you know why we exclude the railway employees?

Mr. COLLEY. Well, I would like to know, Senator, because these men are asking me.

Senator WAGNER. Because they have got this very bill that I am trying to pass to protect other workers. The Railway Labor Act that we passed last year by a unanimous vote of both Houses, has exactly the protection against the domination of the workers that we have in this bill, almost word for word; and the reason we excluded it is because they had protection already.

Now, does that answer your question?

Mr. COLLEY. Well, in a way; yes.

Senator WAGNER. Well, in the way I have said.

Mr. COLLEY. Then why not eliminate it from this bill, because, in a way, this is excluded, because the men right away see they are excluded. If this is taken out, it is the same thing they have, as you say, that we already have.

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Senator WAGNER. The representatives of the railway workers have come here favoring this legislation, but the reason that they are not included here is because they have already got the protection that I am seeking to give to other workers, simply that they may be free men.

Mr. COLLEY. Then I do not see why you should have even put that in there. Why do you not bring them under this clause and be done with it?

Senator WAGNER. Because they have got it already, word for word. They have got this very thing.

Mr. COLLEY. I still cannot see it.

Senator WAGNER. Well, of course, if you cannot see it, I cannot do anything about it.

The CHAIRMAN. Do you think, Senator Wagner, that a closed-shop agreement that exists now, where there has not been a vote of the majority of the employees, would be dissolved by the passage of this act?

Senator WAGNER. I do not think so. If it is legal in the States, it would not be dissolved.

The CHAIRMAN. I thought that this provision we had been discussing provided the method for establishing closed shops, where a majority of the employees and where the employer decided to do it.

Senator WAGNER. Yes.

The CHAIRMAN. But I did not understand that it prevented an employer, where only a few of his employees wanted a closed shop, from making such an agreement.

Senator WAGNER. Well, so far as this legislation is effective, it protects the workers in that the closed-shop agreement cannot be made unless the majority of the workers agree to it; but so far as agreements now in existence are concerned, there is no legislation we can pass to impair the application of those contracts.

Mr. COLLEY. Well, what is the minority group of the workers going to do if this legislation passes?

Senator WAGNER. They approve this legislation. I mean, that is the answer. Let them take care of themselves. They feel that this is for their protection, so they are for it, and I do not think they would care to have you represent them very much.

Mr. COLLEY. Well, we have been in existence there for a long time, and there is no labor trouble. There are no union men there.

Senator WAGNER. All right. Now, what I ask you is what particular provision of this bill in any way is going to abolish your organization?

Mr. COLLEY. I have pointed out to you. As I told you before, I am not an attorney; I cannot get all this out. I read it.

Senator WAGNER. Who told you that it would destroy your organization?

Mr. COLLEY. The body of men we gathered together.

Senator WAGNER. How?

Mr. COLLEY. The body of men that I represent, 63, and they all expressed their viewpoints. I am only conveying to you the viewpoint of those men.

Senator WAGNER. That is all right, and I admire you for it, but have I not a right to know?

Mr. COLLEY. Sure you have a right to know.

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Senator WAGNER. Have I not a right to know what particular provision it is in this bill that is going to destroy your organization?

Mr. COLLEY. Well, we will assume that we call this "unit", this term of "units." I do not know where it is in here. I do not have it marked.

Senator WAGNER. In the event of an election?

Mr. COLLEY. In the event of an election.

Senator WAGNER. The Board could determine.

Mr. COLLEY. It gives the Labor Board the power to determine what a "unit" is. Now, we have got a representation of 3 men out of 28 in our transportation department. Maybe we do not understand this the way it is written here [reading]:

> The Board shall decide whether in order to effectuate the policy of this act the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

We may be wrong, but the way we have termed that now is that if one of these men out of that unit that we have now decided to call on the Labor Board, the Labor Board will grant a vote or just do anything they can to carry on, and then one branch of our company will be under a union.

All right—every day somebody comes along with some little petty thing and writes in to the Labor Board, and we have another vote the next day, and maybe the next week another vote, until you would be tired of it.

Senator WAGNER. As a matter of fact it does not happen that way.

Mr. COLLEY. There is nothing to stop it from happening.

Senator WAGNER. How is that?

Mr. COLLEY. I do not think there is anything to stop it from happening.

Senator WAGNER. The Labor Board has had the power of election, so far, that has been denied the workers, or at least the management has refused to permit elections to be held in some instances.

Mr. COLLEY. I understand that that has happened in some of the plants, but it has never happened at our plant. I am expressing the viewpoint of the men at our plant.

Mr. WAGNER. Exactly. Now, somebody must decide. Supposing there is a dispute; supposing that among your men there is a dispute now as to who represents them—an illegitimate dispute, I am speaking of—so that an election must be held to determine as to who the workers want to represent them. As it usually happens, the management says, "These men that say they represent the workers do not represent the workers. We deny that they represent a majority of the workers." Then you have got a stalemate in the negotiation unless you ascertain in some way who represents the workers; so what you do then is, you have an election, an open, fair, square election, free from domination by any employer or any other influence of any kind which has an economic pressure, the loss of a job, you know—that is always a great handle to have—"your job goes if you do not do what I say."

Then we have an election to decide who represents the workers. How is the election to be held? Somebody must decide whether the workers in all three plants vote as one, or whether each plant votes separately, or whether there are different crafts which do not relate to one another, where the workers in one craft do not know the prob-

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lems of the workers in the other craft. In that case it may be stated, "Let those crafts of the workers in the particular craft vote for their representative and then they meet the workers."

Somebody must decide it, and that is given as a governmental function to decide. In your case undoubtedly in the first place, as you say, there is no question about who represents the workers, because you say you have had an election. That has determined the question.

Mr. COLLEY. They can have an election every month, themselves, if they want to, according to their bylaws.

Senator WAGNER. Oh, no. Well, now, exactly—then, there is nothing here to interfere with that. This is only where there is a dispute as to who does represent the workers. How else can you determine it except by an election, if there is a dispute?

Mr. COLLEY. No other way.

Senator WAGNER. Well, that is all there is to this.

Mr. COLLEY. Well, still and all, I am objecting to your bill, Senator.

Senator WAGNER. You want to stick to your story?

Mr. COLLEY. I am sticking to my story.

Senator WAGNER. That is it.

Mr. COLLEY. And I moderated it considerably from what they asked me to do. They said, "Throw the bill out as a whole", and I said, "I am not man enough to go down there and debate with Senator Wagner", so I cut it down as much as I could.

The CHAIRMAN. Mr. Caldwell.

STATEMENT OF ROBERT T. CALDWELL, ATTORNEY FOR THE AMERICAN ROLLING MILL CO.

The CHAIRMAN. Mr. Caldwell, do you represent the management?

Mr. CALDWELL. I am attorney for the company.

The CHAIRMAN. And these men are the employees? Would you like to be heard?

Mr. CALDWELL. Briefly.

The CHAIRMAN. Your full name is Robert T. Caldwell?

Mr. CALDWELL. Yes, sir.

The CHAIRMAN. And you are an attorney for the management of the American Rolling Mill Co., in the Butler plant, at Butler, Pa?

Mr. CALDWELL. Not in the Butler plant, but for the company generally.

The CHAIRMAN. For the company generally?

Mr. CALDWELL. Yes, sir.

The CHAIRMAN. How many plants has the company?

Mr. CALDWELL. The company has plants at Ashland, Ky., Butler Pa., Middletown, Ohio, Zanesville, Ohio, and has recently acquired what I understand to be a controlling interest in a small plant at Kansas City. I am not positive whether that is a part of the corporation or controlled by the corporation.

The CHAIRMAN. You desire to call our attention to certain features of this bill?

Mr. CALDWELL. Yes, sir.

The CHAIRMAN. You may do so.

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Mr. CALDWELL. I would like if permitted to supplement some of the information that the employee representatives who have just been heard have put in the record. As stated by the gentleman who preceded me, this company had operated under a representation plan for a number of years. The Ashland plant, which is in my home town, was purchased by the Rolling Mill Co. in 1921. It was a steel plant that had failed, the precipitating cause of its failure being a protracted strike in a labor controversy, and following their purchase of the Ashland plant the employee representation plan which was in effect in its previous plants was also put into effect in Ashland.

When the Butler plant was purchased, I think in 1926, the status was, as Mr. Colley has told you, when the Recovery Act went into effect in 1933, all these plants were operating under the employee representation plan, which was then in existence, but as it had not been officially adopted in a manner which might have been considered complying with section 7 (a) the question was raised as to a formal adoption of it as a means of collective bargaining complying with the act of Congress, which had become a law; so before undertaking to adopt a plan in that manner it was discussed by the employee representatives then in office with representatives of the management and with the men, whether the plan as it then existed was adequate to comply with section 7 (a).

To permit the men to determine that for themselves, a "yes" and "no" vote by secret ballot was then taken in every plant upon the question, "Do you consider the present employee representation plan satisfactory to operate under the provision of section 7 (a)?" I think that was the language of the ballot, but at least that was the substance, and the men conducted an election themselves on the question that I have stated, and reported to the management what the result of the vote was.

They reported that 60 percent of our employees considered that plan as it then stood as inadequate to comply with N. R. A., and 40 percent considered that it was adequate. Then the plan was revised in the manner stated by Mr. Colley, who told you how the men went about making suggestions for changes, but when the plan was revised as he has stated, the employee representatives who were holding over from the previous year's election, requested that the new plan as revised by them be submitted to a secret ballot, "yes" and "no" voting, to see whether the employees desired to accept it, and that election was conducted by the men, and the results reported to our company. They reported that 93 percent of the employees working for the plants on the day of the election voted on whether or not to adopt this present plan, a copy of which has been handed to Senator Wagner, and reported that of the 93 percent of the employees voting by secret ballot, 90 percent favored adopting it as a means of representation under 7 (a), 10 percent of those voting, in the aggregate, opposed adopting it, and pursuant to that vote the plan has been in operation and the representatives have been elected under it.

Without reviewing the details of it which have been discussed by the Senator and Mr. Colley, I wish to call attention to one point, that

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while these men are representatives of the employees, having been elected by secret ballot for 1-year terms, there is a provision in the plan that permits the employee desiring to do so to be represented otherwise than through these representatives. It is not a compulsory majority-rule plan for that reason.

Turning to page 14 of the plan, section 8, entitled "Procedure for Adjustments", it says:

> Any matter which in the opinion of any employee or employees—

which would include any minority group—

> requires adjustment, and which such employee has not been able to adjust with his foreman or supervisor, may be taken up either in person or through any employee representative of his department.

So that under the plan of those employees who desire to permit the representatives to negotiate for them, do so, but the minority is not compelled to proceed in that manner, and in active operation of the plan, both methods have been observed. Individual employees and groups of employees have come outside the representatives and negotiated direct in certain instances.

The last election which was held under this plan and for which I have the figures shows that in December 1934 our elections, being held in that month, there were in the Ashland, Butler, Middletown, and Zanesville plants, in the general offices, a total of 7,939 employees eligible to vote. No officer or foreman or supervisory employee is permitted to vote, and on the day of the election, of those 7,939 men on the pay roll entitled to vote, 719 were not at the plant during the 3 shifts that the polls were kept open, so that there were present at the plant during the 3 shifts on election day, 1934, 7,220 employees entitled to vote. Of that number, 7,159, or 98.7 percent came to the polls which were being conducted by their fellow employees and voted in the election of these representatives.

The plan in substance provides that the employee representatives groups meet themselves to discuss the matters which they consider necessary to be considered, at any time, and when those groups meet no representative of the management is present. Of the group which represent three turns, the men who are on turn and thereby would lose time by meeting, their time continues and they are paid. The men who are not on turn and do not lose actual wages are not paid.

The joint meetings are held monthly unless special meetings are requested more frequently, and at those joint meetings these representatives present any matter that they desire.

I have the records here for the Ashland division, showing the proceedings of this representative plan during the fiscal year ending July 1, 1934. I am advised by representatives of the general management present that the aggregate results for the other plants are practically the same as these, the variation is slight. I have a table. I desire first to file this table showing the result of this election.

The CHAIRMAN. That may be done.

(The table presented by Mr. Caldwell is as follows:)

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Report on election of employee representatives, December 1934

[Prepared by Personal Service Staff Jan. 3, 1935]

Division	Number of employees eligible	Number of ballots cast	Percent of employees eligible to vote	Number of good ballots	Number of defective ballots	Number of blank ballots	Number of employees eligible who were absent	Percent employees eligible and present who voted
Ashland	2,462	2,231	90.6	2,212	14	5	185	97.8
Butler	1,531	1,386	90.5	1,376	0	10	145	99.3
Middletown	3,013	2,801	93.0	2,783	14	4	197	99.3
Zanesville	687	509	74.1	492	3	14	178	97.2
General office	246	232	94.3	232	0	0	14	100.0
Total	7,939	7,159	90.2	----------	31	33	719	98.7

Mr. CALDWELL. This second tabulation is entitled "Operation of Employee Representation Plan for Fiscal Year Ending July 1, 1934, Ashland Division." Total requests presented to management by employee representatives, 1,128. Requests granted by management, 1,050 or 93.5 percent. Requests refused by management, 31, or 3 percent. Requests compromised, 7. Requests withdrawn, 15. Requests pending July 1, 25; total, 1,128.

Subdivided as to the nature of their requests, those involving safety, including methods and equipment, 600; working conditions other than safety, 218; wages, 91; discharges and reemployments, 34; miscellaneous, including medical, sanitation, association, and others, 185; total, 1,128.

The committee will observe that out of 91 requests for wage increases, 218 requests for improvements in working conditions, 34 requests for reinstatement of discharged employees, or a total of something over 300 questions involving those usually resulting in labor trouble, they, along with the other requests aggregating 1,100, involved only 31 refusals. The figures I am quoting here are for the Ashland plant, but they are in line with the request of the country.

The text of the bill, which has been the subject of some discussion with the previous witnesses, contains some points of which I would like not so much to express an opinion but to ask of the committee information, because it may be that I and other attorneys representing employers misunderstand some of the potentialities of this bill.

The CHAIRMAN. Senator Wagner or the members of the committee will be pleased to answer any questions.

Mr. CALDWELL. The understanding is prevalent among lawyers of the country that the theory is being proceeded on in Federal legislation of this kind that where a statute contains in the body some provision which may excite question as to its constitutionality or as to its legality, that the declaration of policy set forth in the title of the bill or in the preamble to the bill is given consideration by the courts construing it. Is that correct, Senator Wagner?

Senator WAGNER. Yes.

Mr. CALDWELL. Then I take it that section 1 of this bill, entitled "Declaration of Policy," is to be given the greatest weight in con-

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struing what can be done under the particular sections. That is true, is it?

In the second section of the declaration of policy the following is stated:

> It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and recognition of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

Do I correctly understand that that language speaks for itself and that the purpose of the bill is to give the employee, in selecting his representatives, full, absolute freedom of choice? Does that protect him against any form of coercion?

I pass the question. I simply would like to put it in the record.

Senator WAGNER. It gives him absolute freedom from economic coercion from his employer, because this is really not the affair of the employer.

Mr. CALDWELL. Then the language quoted in the preamble is actually more restricted than it reads, is that correct?

The CHAIRMAN. You mean broader than it reads?

Mr. CALDWELL. Yes.

The CHAIRMAN. You mean broader than the bill itself?

Mr. CALDWELL. Yes, sir.

The CHAIRMAN. In other words, you think the language in the preamble would indicate that the purpose of the bill was to prevent any interference with freedom of choice on the part of fellow employee as well as employer?

Mr. CALDWELL. I take it, Senator, that to grant a man full freedom to do something, he must not be coerced by anyone. I think that is the logical interpretation of that language, but I do not want to delay the hearing. I simply raised the question.

The CHAIRMAN. You would think that the words "freedom of association and self-organization and designation of representatives of their own choosing" with full freedom should be modified in view of the later language in the bill, by the words, "by his employer"? You do not favor that?

Mr. CALDWELL. No.

The CHAIRMAN. But in fact you think that language would embrace objections and interference with his full freedom by employees?

Mr. CALDWELL. I think that the title is correct insofar as my opinion might be of any value, and that every employee is entitled to full freedom in the selection of his representatives primarily because section 7 (a) says so in the act of Congress, and I think this act ought to say so, and ought to so provide.

The CHAIRMAN. Of course, the bill does not make it an unfair practice to be interfered with or coerced by an employer.

Mr. CALDWELL. The body of the bill? The technical occasion for raising that question, Senator—I believe all the gentlemen present are lawyers—is this, that in the so-called "Shurtleff case", decided by the Supreme Court——

Senator WAGNER. In what case?

Mr. CALDWELL. Shurtleff against the United States, President McKinley, under an act creating the Board of Appraisers, and which

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said that the President may remove an appointee from that Board for specified causes, neglect of duty, inefficiency, or malfeasance in office—I think those are the ones—removed Mr. Shurtleff without cause, and on his suit for reinstatement the court held that constitutionally the fact that those causes were specified in the bill did not exclude other causes not specified, and that he might remove him without complying with those particular causes.

Now, applying that to this bill you specially provide in the body that an employer must not coerce, but you do not provide that a union can coerce, just as you do not provide that the President could not remove without cause.

Senator WAGNER. Coerce whom?

Mr. CALDWELL. The employee in the selection of his representatives.

Senator WAGNER. One employee coercing another employee, is that what you have in mind?

Mr. CALDWELL. I think, Senator, that you perhaps did not follow my previous sentence.

Senator WAGNER. I did not; I am sorry.

Mr. CALDWELL. But what I mean is this: I am raising here a technical legal question.

Senator WAGNER. Yes.

Mr. CALDWELL. But I take this place to raise it, that there is a legal possibility that if the preamble to your act declares a policy and says a man must have full freedom of choice, and then in the body of the bill you enumerate one class of coercion that you save him from expressly—that is, employer coercion—but say nothing about coercion by third parties, and say nothing to modify that bill to apply to everything, you might have a legal question here as to whether it would not be the duty of the Board to enforce compliance with the title in administering the act and grant him full freedom. Now, that is a question that does arise under those decisions, but that could be taken care of by amendment.

Now, the next question that occurs to me is this: This is at least understood by the public to be a bill to regulate labor disputes, which implies a dispute between an employer and his employees.

The CHAIRMAN. No; the purpose of this bill, if I may state it, Senator Wagner——

Senator WAGNER. Yes, surely.

The CHAIRMAN. Is to provide the machinery for freedom of action on the part of the employees to arrive at a stage for collective bargaining with their employers. It does not enter the domain of collective bargaining. It does say that certain acts upon the part of the employer which would prevent the organization of a union or non-union among the employees or the interference with the individual in selecting what kind of an organization he wants to become a member of, or interferes with his voting, is an unfair practice, in all those steps that employees may choose to take leading up to the point of arranging for collective bargaining with their employer.

Mr. CALDWELL. Thank you; and in order that I may be perfectly clear in understanding the Senator, section 9 of Definitions says that a "labor dispute" of which the Board may have jurisdiction may arise "regardless of whether the disputants stand in the proxi-

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mate relation of employer and employee." That is on page 4, lines 19 and 20 of the bill.

The question I was raising, Senator, was that, as I understand that bill, the disputants who can invoke the action of this Labor Board do not have to stand in the relation of employer and employee; so that if in a particular company's plant not a single employee of the company wanted to have a controversy with that employer, and not a single employee in that plant protested any action to be taken, an outside agitator—if you may call him such—or third party—it sounds better—can go to that employer without the consent or procurement of any employee he has, make a demand upon him, be refused, and go to the Board and say, "I have a dispute with this company." Is that the correct effect of that section?

The CHAIRMAN. That subject matter gave us a great deal of trouble last year—the very question you have raised. Let me ask you first a question: Does the phrase "labor dispute" appear in any other part of the bill except arbitration provisions?

Mr. CALDWELL. I would not like to answer that off-hand, Senator. I would like to check back.

The CHAIRMAN. That is voluntary. If it appeared under the provisions of the bill dealing with unfair practices, I agree with you that it would be unfortunate and improper for some outsider, some busybody, some social worker in the town, to claim that sanitary conditions were not proper in the factory and be able to make a complaint and call this Board's attention to conditions that were satisfactory to the employees but were not satisfactory to outsiders. Of course, it does not seem that a sensible board would pay much attention to such complaints, but anyway I think the point is well made that provisions should be made to limit the issuing and making of complaints in labor disputes to persons who are connected with the plant. I think that is also Senator Wagner's view of it.

Senator WAGNER. I will not agree to that limitation. You are restricting the workers' rights there.

The CHAIRMAN. Except if the employees are members of a national union, I suppose Senator Wagner would claim the right of officers of the national union who were outside of the employees to to make that complaint; but such an organization as we have had before us today—you certainly would not want this bill to reach the stage where an officer of a national—of the Amalgamated Union, or the American Federation of Labor, or the Trainmen's Union, or the Bricklayers' Union could make a complaint.

Mr. CALDWELL. If they have no members in the plant.

Senator WAGNER. Well, of course, if their complaint is unfounded, the Board will soon ascertain that fact, and that will be the end of it, but to restrict this I do not believe is proper. This is not a new principle. The Norris-LaGuardia Act has exactly this same provision in it; and if you eliminate that you are going to put in the very thing which some of the employers have put into the constitution, that you cannot select anybody to represent the worker except somebody that is employed there.

The CHAIRMAN. We are not talking about that now. We are talking about lodging complaints. Am I correct, Mr. Caldwell?

Mr. CALDWELL. Yes, sir.

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The CHAIRMAN. We are talking about who shall lodge complaints.

Mr. CALDWELL. Yes, sir.

The CHAIRMAN. Now, I have an industry, and I have employees. Now, you are raising the question of whether this language permits some outsider in the community—some minister or some other person or some woman's organization, or some labor organization, other other than the one in the establishment—can lodge a complaint.

Mr. CALDWELL. Yes; if no employee in the plant participates. That is my limitation. I said, of course, that if even a very small group of men in the plant belongs to a labor union or have another connection, they have the right to make a complaint, regardless of how few they are, if they have a controversy with the employer, and the Board would certainly be entitled to hear the few as well as the many; but the question I am raising under this language is that whether—no employee being dissatisfied, no employee complaining—whether a third party could come in and say "I will create a controversy in this plant, whether there is one here or not."

Senator WAGNER. Of course, it comes back to the old question which is at the bottom of it. I do not say this of your representative plan, but of most representative plans, that you want to retain the economic advantage which you have—where an employee has any complaint to make, he is at once discharged, and rather than lose his job he is not going to make a complaint. Now, do you want to leave workers of that kind absolutely powerless to belong to an outside organization, and there is an individual who may lodge that complaint without running the risk. The complaint may be well founded, without the individual running the risk of being notified the next day that his job is at an end.

Now, as a matter of being practical, at least, we are conjuring up a lot of situations that never arise actually because the Labor Board, as any board, would be sensible enough to sense whether or not there was a real basis for the complaint or whether there was not.

The CHAIRMAN. Just a moment. There is a provision in this bill that any one employee who is discharged for belonging to a labor organization——

Mr. CALDWELL. I was just going to quote that.

The CHAIRMAN. Has a grievance, and can accuse his employer of an unfair labor practice. Now, the point you make is whether that man himself could make that complaint, or some of his fellow employees, rather than an outsider; that he should not go down to his clergyman or to the owner of the drug store to write the complaint for him; it must be somebody in the plant; an employee must make the complaint. That is it?

Mr. CALDWELL. Now, I am approaching this primarily, Senator Wagner, from the standpoint of orderly and lawful administration of an act of Congress.

Senator WAGNER. That is what I want. I will go the limit with you.

Mr. CALDWELL. As a lawyer, I do not think we can ignore all established principles of procedure. There is no reason why this bill should go off on a tangent from the established procedure that we people in America are used to; and I cannot see how, where parties have no controversy themselves and neither party wants to liti-

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gate, why a third party should be legally authorized to come in and make them litigate, which is the effect of that provision.

Senator WAGNER. You are raising the whole question of secondary boycott. I am very glad, as far as I am concerned, to have your views on that.

Mr. CALDWELL. I am appreciating the information that I am receiving.

Now, section 8, defining unfair labor practice by the employer, correlates with section 10, for the definition of unfair labor practices; so that from the procedural standpoint the Board, under section 10, can hear a complaint, and make a finding of fact that this particular employer has been guilty of the unfair labor practices enumerated in section 8, and make certain orders, upon which its finding may be appealed to the circuit court of appeals; but on reaching the circuit court of appeals its finding of fact is final and not reviewable, basing my inquiry on the Supreme Court's decisions construing the Interstate Commerce Act and the Federal Trade Commission Act, from which these procedural sections are practically copied. You gentlemen are familiar with the limitations on review; but substantially, even though the Board does not follow the weight of the evidence, even though the Supreme Court, as it has said in some cases reviewing those commissions—

We think this decision is wrong; we have no power to reverse an administrative agency except to see whether they proceeded according to the rules, whether they went through the form of a hearing, and not the merit of the decision.

So that that is decided, Senator Wagner, on the Interstate Commerce Act, in the case of Illinois Central against the Interstate Commerce Commission, the Union Pacific against the Interstate Commerce Commission, and is decided with reference to the Federal Trade Commission, in the *Eastman Kodak case* and others with which you are familiar; so that I take it that the appealing employer here will have no more chance of a review than the appealing respondents in those cases, because the language under which he appeals is the same; and if so, then any decision that this Board makes is binding on the courts so far as the facts are concerned, regardless of unfairness; so that the danger then lies in the fact that if the administrative board, who are subject to no review by the courts as to their findings of facts and orders pursuant to those findings, should make what otherwise might be considered an unfair decision, the person affected would have no recourse.

Now, bearing that in mind, I ask the Senator to read with me section 8 as to "unfair labor practices."

It shall be an unfair labor practice for an employee—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

This, I take it, is the "company union" section, if there is one——

To dominate——

Senator WAGNER. Of course, you use the words "company union." I used the expression "company-dominated unions." There are a number of unions, company unions, that are perfectly legitimate. I know some of them that are perfectly legitimate—some of them—and who genuinely represent the workers, but you know a great many that do not.

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Mr. CALDWELL. We flatter ourselves that we have one at our company, but others might be different——

(2) To dominate or interfere with the formation or administration of any labor organization——

which would conclude a representative plan, of course——

or contribute financial or other suport to it——

stopping in the reading of the section at that point. The words "financial or other support" would include even moral support. It would include doing anything that enabled the plan to function. Now, these plans that have been described to you here today provided that the company pay these men in some instances for their time in attending meetings, whether they were on turn or not. Others provided that they paid them, and ours provides when they meet, even though they are not meeting with the management—and the most effective meetings that these men have are those that are not with the management—so that under that section the words "material support" would render unlawful every plan that has appeared before the Board this morning, every group of employees that came here this morning and testified to facts which would enable this Board to outlaw those plans as they now exist.

Now, in addition, the words "other support" than material necessarily means moral support of any kind, so that, Senator Wagner, this is the thing I fear will interfere with the employee representation plans, that if the Board, who can say that a fact is a fact and cannot be reviewed in saying so, considers that your company is rendering moral support to a representation plan, even though it not be financial support, they can order you to dissolve that plan and you have no appeal.

I think that that language is entirely too broad, coupled with the unreviewable fact-finding power of the commission, and I think it will be a fruitful source of controversy between the Board and the parties affected.

Senator WAGNER. You think it is a little indefinite?

Mr. CALDWELL. Yes, sir. I think it should be made more specific. I am not saying it could not be made properly specific, and I credit entire frankness, Senator Wagner, to your statement that the bill is not intended to outlaw a proper company union.

Senator WAGNER. Not if it is the will of the workers.

Mr. CALDWELL. So that you and I are not necessarily at odds on the purpose of it.

Senator WAGNER. No.

Mr. CALDWELL. But I do believe that that language is too broad, coupled with the language of section 10, and should be amended.

Senator WAGNER. I was interested, however, in your statement in which you said that under the plans, if you stopped these contributions to the workers, to pay them even in addition to actual time lost, that the plan itself will crumble?

Mr. CALDWELL. No; I did not use that statement.

Senator WAGNER. Well, not "crumble"——

Mr. CALDWELL. No, sir.

Senator WAGNER. But you said it would be "outlawed."

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Mr. CALDWELL. Well, whatever I said then, I will say now that as those plans stand today they do not comply with this section, do they?

Senator WAGNER. No; not on the financial support only.

Mr. CALDWELL. Then am I correct in saying that if they do not comply with this section, the present plant could be enjoined by this Board?

Senator WAGNER. If it is simply modified so as to limit the contributions by the management to the organization?

Mr. CALDWELL. Do you not think then that in an important matter like this, to all these workmen and companies, that if the proper jurisdiction of the Board is to modify a plan instead of abolishing it, that your law ought to say so?

Senator WAGNER. Well, personally you approve of all of these financial contributions by employers to employees? Perhaps I should not ask that. I withdraw the question.

Mr. CALDWELL. Senator, if I may be permitted to make a remark that is not facetious, I am attempting to attend strictly to my own business, representing my own company, and whatever I say about the practices of my company in no sense implies a reflection on the practices of other gentlemen in other companies. I state it as a fact that our company had adopted that policy of not paying the employee representatives who were not on turn. I do not imply that to pay them would in any sense be subject to criticism.

The CHAIRMAN. Will you let us have your suggestions as to an amendment that would change that language and restrict it?

Mr. CALDWELL. Might I have the opportunity after leaving the stand?

The CHAIRMAN. Certainly; at any time.

Mr. CALDWELL. I will hurry through, Senators. This question of minority rule and closed shop is a matter that I, as an attorney, should not presume to speak on. You have before you here the men and the employers, and I think that is hardly proper for me to go into.

Senator WAGNER. Before you get away from that section, of course, there is this provision, that an employer shall not be prohibited from so permitting the employees to confer with him during working hours without loss of time or pay.

Mr. CALDWELL. That is, with him, Senator?

Senator WAGNER. How is that?

Mr. CALDWELL. That would not permit them to meet alone? The words "with him" prevent the men from meeting alone.

Senator WAGNER. You think there ought to be included the provision that if he confers with either employer or employee——

Mr. CALDWELL. Yes, sir: in the discharge of his duties as a representative, of course, because in most of these plants I think it is a fact—in our own I know it is a fact—that the actual procedure is that the employee representatives meet alone, sometimes, frequently because they come to the management with a considered proposal, and this language would prevent them from conferring with each other as they should do before they undertake to present a plan to the employer. I think in the interests of the efficiency of operation it should be permitted.

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Senator WAGNER. I did not say I was agreeing with it; but I was wondering what it was you were suggesting ought to be added there.

Mr. CALDWELL. I think the words " with him ", which limit the allowance of time to a conference in which the management participated should extend to any conference that that employee holds with either the management or the men whom he represents, because he has to confer with those whom he represents before he can intelligently approach the management.

The CHAIRMAN. That difficulty could be corrected.

Mr. CALDWELL. Yes, sir.

The CHAIRMAN. By inserting, after the words " with him ", " or by themselves as representatives of the employees during working hours without loss of time or pay."

Mr. CALDWELL. Any appropriate language, Senator, would reach my objection.

The CHAIRMAN. I think that point is well made.

Mr. CALDWELL. Hurrying on, Senator, to section 9 (c)——

Senator WAGNER. Mr. Caldwell, before you get away from this—you do not mind my interrupting you, do you?

Mr. CALDWELL. No, sir; I appreciate it.

Senator WAGNER. This court-review proposition, of course, you recognize that in all of the public-utility laws of the States there is a similar provision—that is, that the facts found by the commission are binding upon the court, and also the Interstate Commerce Commission and the Federal Trade Commission, and now the communications bill which we passed last year, have identical provisions—that so far as the facts are concerned they are binding upon the court—but that does not prevent the court from an examination of the evidence; and if the court finds that there is no evidence to sustain the conclusions of the particular commission they still can set it aside.

Mr. CALDWELL. That is true, and I am not questioning either the legality or the propriety of those provisions, because you have to make some provision that will make for administrative efficiency in the transaction of the Government's business, but I say, Senator, that in view of the fact that those provisions did not permit the court to review the administrative commission's finding of fact, then the jurisdiction of that unreviewable commission ought to be definitely fixed; and in the Federal Trade Commission, if you recall, there is a specific authorization of the Federal Trade Commission to prohibit unfair trade practices. There is no indefinite situation, as in section 8. In the Interstate Commerce Commission, they have the authority that is provided in that statute, with which you are familiar, including reparations, and in that connection also there appears to be a question of constitutionality involved in this section. The Interstate Commerce Commission can give relief other than reparations upon a finding of fact which cannot be reviewed by the court. The Federal Trade Commission can enjoin unfair trade practices upon a finding of fact which cannot be reviewed by the court, but when the Interstate Commerce Commission grants a reparation the law provides that that finding is prima facie only and may be reviewed in the courts, because the seventh amendment to the Federal Constitution forbids the recovery of damages without trial, so that in the

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Supreme Court case which passed on that point they held there that where reparation is ordered by the Commission there must be a de novo trial in a constitutional court because of the seventh amendment to the Constitution, and in the Interstate Commerce Commission reparations are obtained by trial in court, and the Federal Trade Commission makes no reparation, but in this bill this Labor Board, which is a statutory commission, is attempted to be invested with the power to make reparations. That, I think is wholly unconstitutional under those decisions.

In subsection (c) of section 9 it is provided here that the board, whenever it considers an occasion justifies it, may order an election, but if that election is held by the board there is no provision for how long the thing determined by that election shall continue. Now, ordinarily when a law provides that something shall be done it says how long that status shall remain when it is done, and it seems, both as a lawyer and from the practical standpoint, that for the board's protection and the men's protection and the company's protection, that when you have an election it ought to settle something, and it ought to be provided that for some specified time that election shall remain in effect because otherwise the losing group who have been there will come back maybe next week or next month and want the board to have another election because they think they can win it, and I think from the standpoint of orderly procedure and from relieving the board from a situation of that kind, that when the board does hold an election it ought to settle something for some time.

Senator WAGNER. Have you got something in mind?

Mr. CALDWELL. Most of the employee plans and most of the union contracts are by the year, are they not, Senator?

Senator WAGNER. Yes.

Mr. CALDWELL. Are not the contracts with the mine workers by the year, and the steel workers?

Senator WAGNER. They were for five years, I think, the mine workers, but I think the last one was for one year only.

Mr. CALDWELL. That is my understanding.

Senator WAGNER. But you are right about it; the general rule is a year.

Mr. CALDWELL. Taking that as indicative of what is proper from the business standpoint, I think that when the board settles something by election it ought to be just like these union contracts; it is for a specific time.

Another thing there that I question is that the board may permit the employees to select their representatives by a secret ballot but does not have to grant them that privilege. I believe, gentlemen, that the only fair way for an employee to select his representatives without coercion is to do it by ballot, because any election held publicly, just as Senator Wagner called Mr. Colley's attention, the employee knows he is voting, the union knows he is voting, and if it is public they know how he voted. I do not think that is fair to the men. I think the Government elections ought to give the men the right of voting by secret election the same as any other election.

Senator WAGNER. The elections which the Government has held always have been by secret ballot.

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Mr. CALDWELL. And I think the law should perpetuate that practice.

Senator WAGNER. There was one conducted under my supervision, among the United Mine Workers, in which 15,000 workers voted without a single disturbance. That was a fine record.

Mr. CALDWELL. And that was by secret ballot.

Senator WAGNER. Absolutely.

Mr. CALDWELL. And does the Senator agree with me that the secret ballot is the right thing for the workers?

Senator WAGNER. Yes; absolutely.

Mr. CALDWELL. Well, then, it ought to be in the law.

In the prevention of unfair labor practices, section 10 (c), from the procedural standpoint in which I am particularly interested as an attorney, the law provides that your hearings may be had anywhere in the United States, and this law provides, unlike the previous so-called "Wagner bills", that the hearing may be had anywhere in the United States about 3 days' notice, and makes no provision for continuance, and does not require reasonable notice.

Now, I answer in advance of your comment, Senator, that the Board is not going to be unreasonable, but where you are imposing powers which you give this Board, you ought to limit them in an orderly fashion, and I think that the same provision that exists in the Interstate Commerce Act for reasonable notice, or the provision in the Federal Trade Commission Act, which requires 30 days' notice, which is of course reasonable, should be followed, that you should not permit anybody to put a man on trial anywhere in the United States on 30 days' notice.

Senator WAGNER. Mr. Caldwell, could you think of this side of it? My experience has been, my very brief experience in actually attempting to compose industrial differences, that the quicker you intercede the more likely you are to compose the differences, and that if you delay it for 30 days, particularly if there is a strike imminent, gradually this hatred grows, and at the end of 30 days you have such feeling on both sides that you have a much more difficult task than if you had handled the thing expeditiously, and prevent terrific waste, which all strikes are.

Mr. CALDWELL. I am not advocating the Federal Trade Commission's 30-day rule. I do believe, however, that the law should provide reasonable notice, because in the first instance under the Constitution due process of law would provide that, and certainly there should be no objection to giving a man that which you know he is entitled to under the Constitution. The other thing that troubled me is this, in that same paragraph, in those acts that I have been discussing, which proceed somewhat similar to this, they provide that anyone who wishes to may intervene in the proceedings. Now, by intervening, the legal effect of that is that if you come into proceeding and introduce proof you subject yourself to the jurisdiction of the party before whom you are appearing and offering proof, so that having admitted you into the proceeding, allowed you to intervene, allowed you to introduce witnesses, you should necessarily subject yourself to the jurisdiction of the body before whom you have proceeded.

Now, those acts provide that a third party can intervene. That has a legal significance, but this act would provide that in the discre-

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tion of the member, agent, or agency conducted the hearing, or the Board, any other person may be allowed to appear in such proceedings to present testimony. They are not required to intervene, and therefore are not bound by the order, and therefore most lawyers who are familiar with the provision would object on purely legal grounds to permitting a person to have the advantage of coming into a trial, offering evidence by witnesses, and still not subjecting himself to the jurisdiction of the court or the body before whom he was appearing. So I think there that the provision of the Federal Trade Commission Act, that any third party who desires to intervene in the hearing should do so, but he should not be permitted the privileges of the court and the right to introduce testimony unless he is willing to intervene and subject himself to the jurisdiction of the Board, according to the judgment rendered on the evidence which he has introduced.

The next subsection that I would like to ask the committee's opinion on, (d), is this:

Subsection (c) provides that you shall notify the parties, and they appear and have a hearing, and in that hearing others have to come.

Now, as section (d) reads, this might happen, after this hearing under section (c) was over.

> The testimony taken by such member, agent, or agency, or the Board, shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board may itself take further testimony and/or hear argument.

Now, that does not entitle either party to notice or presence at the taking of that further testimony by the Board, and of course from a constitutional standpoint the objection to that is obvious. There should be no testimony taken by the Board except upon notice to both parties, in the presence of both parties, or an opportunity to be present, and that language does not guarantee an opportunity to be heard.

The same section provides, there, that after hearing the evidence the Board may order the party to cease and desist from such unfair labor practice, and to take such affirmative action, including restitution, as will effectuate the policies of this act. The provision for restitution I consider unconstitutional for the reasons stated, and the provision that in addition to a jurisdiction to do a specific thing, you may require them to do anything else that you want them to do that you think is in accordance with the purpose of the act, is so vague and indefinite that, judging by previous court decisions as to statutes being void for indefiniteness, I am not sure that that section is specific enough. I think that the thing that the Board can do should in some degree be definite so that man who does not want to violate the law will be advised.

Senator WAGNER. It deals only with unfair labor practices.

Mr. CALDWELL. I think, there, though, that the relief that you may administer is indefinite. In other words, you can tell him to desist from an unfair labor practice. That is specific and clearly constitutional, and that is your jurisdiction under the first section, but it says in addition, after telling him to desist from an unfair labor practice, you may tell him to take such affirmative action as the Board may think proper. Well, now, that takes in the universe, the Board can tell him to do anything. They can tell him to desist from this unfair practice, and in addition to take such affirmative action as the Board

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thinks will effectuate the act. I think that is entirely too indefinite and very dangerous.

Then one other question and I am through. And one of the practical problems that is confronting lawyers for employers considering this bill is, who are subject to it. In other words, no company wants to violate a law it is subject to, nor do they want to submit to a law that they are not subject to and have no connection with, and the definition of subsection (8), apparently limiting the jurisdiction of the Board, is as follows:

> The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

Judging by the decisions of the Supreme Court to date, like the *Bedford Stone Cutters case*, the *Coronado Mining case*, the *Herkett & Meisel case*, and the others with which you gentlemen are familiar, that definition of the Board's jurisdiction under a Federal act, things that might happen, which if it did happen might affect interstate commerce, and thereby bring it under the commerce clause of the Constitution, appears to me to be beyond the scope of any Supreme Court decision to this time, up to this date, and will certainly cause the jurisdiction of the Board to be challenged in a number of cases. During the last week I heard Mr. Richberg testifying before the Finance Committee, in which he stated—quoting him substantially—that one of the difficulties that the N. R. A. has encountered in administration was the uncertainty of its jurisdiction, that certain employers claimed they were not under the act, Congress had no power to regulate them, and as I understood his testimony he thought that there should be a definite rule laid down by which the Government and the party affected could determine with some certainty whether your business in your plant is under the act or whether it is not. Well, under this definition where you have one speculation or possibility pyramided on another speculation or possibility, how is an employer who wants to obey the law, if he is under it, and does not want to concede the jurisdiction of the Board if he is not under it—how is he going to determine in a doubtful case whether his company is under it, except with a lawsuit?

Senator WAGNER. I think that you and I would agree that a condition which may lead, unless something is done at once to alleviate it, to an industrial warfare, would to the extent of that industrial warfare interfere with interstate commerce or tend at least to dry up the wells of commerce. That is something that has been asserted by the court in several cases, that it does not have to be an actuality in interstate commerce, as you know. I mean, I do not think you and I have a difference on that.

Mr. CALDWELL. I doubt if we could extend this record by the technical discussion of the law question, but I would answer you this way, Senator, that necessarily these employers and the attorneys advising them have to rely upon specific decisions of the Supreme Court as closely as they can. That is the only way that we can know what the law is, and rather than discuss an abstract theory I would have to refer to the specific cases in point and try to follow them. Now, under the *Herkett & Meisel case*, for example, just without imposing too much on your time, in that plant there was a strike, and that

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prevented the plant from making trunks. Ninety percent of their trunks were shipped out of Missouri when they were made, and the strike to the extent of 90 percent of their business directly stopped that flow of interstate commerce, but the Supreme Court held that even that did not come within the commerce clause of the Constitution. In the *Coronado Mine case*, that you recall, district 21 in Arkansas had a strike that tied up a number of coal mines, and they held there that that did not come within the commerce clause, although the effect of that strike was to stop the product of several mines.

Then, in the *Bedford Stone Cutters case*, on the other side, where they did hold that the commerce clause applied, there was no strike between the men in Colorado who were objecting to using this stone, but there was a controversy between the stonecutters and the plant in Indiana that would not join the union, and the purpose of the strike, the purpose of the controversy there, the boycott, not a strike, was to prevent the employers of these men from buying in interstate commerce that uncut stone.

If you will read the Bedford Stone Cutters decision, the *Herkett & Meisel case*, and the *Coronado case*, the thing is clear as I understand it, that a controversy in a plant which prevents the manufacture of goods in that plant or the running of coal in that mine, is not within the commerce law, but a conspiracy and boycott, the direct purpose of which is to restrain interstate commerce, is within the commerce clause.

Now, this is going to be applied to people like Herkett & Meisel and the Coronado Mining Co. It is going to be applied to controversies in their plant which stop their mining or manufacture, and answering your question, I cannot agree that under those decisions, either of them, or any decision that I know of, has gone as far as this definition.

Senator WAGNER. Of course, the courts in all of these cases where they are called upon to construe a statute passed by Congress, as reported, relied a good deal upon the declaration of the facts which Congress has found as the basis for the legislation. I do not know of a single case—perhaps you do—where a Congressional act was set aside as being unauthorized under the Interstate Commerce clause, where Congress in its declaration of policy has found the particular acts prohibited would, if not prohibited, affect or burden interstate commerce, so that the declaration of Congress is very persuasive as to whether the matter does affect interstate commerce.

Mr. CALDWELL. Has Congress, prior to the last 2 years, undertaken to take in the territory that you are taking in now?

Senator WAGNER. Each time, they take in a little more territory, because our problems are becoming different. We have got to deal with them differently. I think at least our Supreme Court will be persuaded that economic problems cannot very well be dealt with except on a national scale and by some national plan, and that is because of changed economic conditions. We have got to recognize that. We have got to go forward. But am I right about the statement I made?

Mr. CALDWELL. The first statement?

Senator WAGNER. Do you know of any case?

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Mr. CALDWELL. I will not undertake to cite one from the chair. I am not absolutely sure that I would agree with you. If I can, I should like to refer to the cases. I cannot cite one at this time.

Senator WAGNER. That is my recollection. I am not sure either, and I know that you are a very good lawyer. I can see that. I thought you might be able to tell me.

Mr. CALDWELL. I do not want to claim more than I know, but in conclusion, gentlemen, while the question of national policy that Senator Wagner has just announced is a matter before you, the employer is simply a business man who is operating under the law as it now is, and he can only at his own risk proceed upon what appears to be the law, and not what he thinks will be the law when the Supreme Court decides differently.

Senator WAGNER. That is correct.

Mr. CALDWELL. And in view of the existing law, under the existing conditions, we think this definition is too broad and goes beyond the scope of interstate commerce as up to this time announced by the Supreme Court, and not as it may be announced in the future, because we do not profess to know what that will be.

Senator WAGNER. Mr. Caldwell, are you acquainted with the *Appalachian case?* You undoubtedly know the *Appalachian case.*

Mr. CALDWELL. The *Appalachian Coal case?*

Senator WAGNER. Yes, sir.

Mr. CALDWELL. I was familiar with it.

Senator WAGNER. If I may ask you a personal question, what would have been your prediction as to how the court would decide that case before it was actually decided by the United States Supreme Court?

Mr. CALDWELL. I would rather you would ask me about the gold-clause case.

Senator WAGNER. I do not want to ask it if it is embarrassing, and yet I think the decision was right. I agree with the decision.

Mr. CALDWELL. As a lawyer, I have always tried to follow the existing cases and form my opinions on them, and not speculate on what the next one will be, and all I could have said in response to that would have been to have told you that I knew of no case before that in which the court went that far. Did you know that?

Senator WAGNER. No; we just moved forward on that.

Mr. CALDWELL. Yes.

Senator WAGNER. That was an economic policy, that was all.

Mr. CALDWELL. I am not questioning the necessity of doing that.

Senator WAGNER. Do you know why the provision was put into this constitution, if you are acquainted at all with it, "This plan shall remain effective only during the National Recovery Act"?

Mr. CALDWELL. Is there such a provision? Will you please cite the page?

Senator WAGNER. I will read it. That will be the better way:

> This plan shall remain in effect during the term of the National Industrial Recovery Act and thereafter may be terminated either by the management or by a majority of the employees upon 3 months' notice to the other.

Mr. CALDWELL. No, sir; I cannot answer why any of these sections were put in here, because the plan was drawn in the manner that has been told you, but if I correctly understand that section it means that the plan must continue so long as the N. R. A. exists.

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It is drawn apparently to comply with the N. R. A., and that, after the N. R. A. ceases to exist, if it should cease, that it will go on, as you might call it, a tenancy-at-will, until one side or the other wishes to withdraw. Does that mean that they must abandon it as soon as the N. R. A. is over?

Senator WAGNER. No; but it means the management may dissolve an organization that we are told was organized by the workers themselves for the purpose of bargaining collectively.

Mr. CALDWELL. As I say, I could not tell what was in the minds of the men at the time. I do not know.

The CHAIRMAN. Thank you.

Mr. CALDWELL. I would like to be permitted, Senator, to cite some of the cases that I referred to.

The CHAIRMAN. We should be pleased to have any suggestions you choose to send to the committee.

The CHAIRMAN. The employees of Jones & Laughlin Steel Corporation. Are you present? Please stand.

The employees of the American Sheet & Tin Plate Co., Vandergrift Works, and the employees of the Carnegie Steel Co., Youngstown district. Will they stand?

Also the Acme Steel Co. employees.

Now, gentlemen, our time is so late, we have consumed so much time with this hearing today that we cannot remain in session longer. If anyone wishes to file a statement with us, we shall be glad to have it. Otherwise, you will have to return tomorrow morning. Which do you prefer to do? You may confer among yourselves.

Mr. HADDEN. Mr. Chairman, as chairman of the employee representatives of the Vandergrift Works of the American Sheet & Tin Plate Co., located at Vandergrift, Pa., we prefer to file our statement with the committee at this time.

The CHAIRMAN. You are Mr. W. B. Hadden, and you are chairman of the employees' representatives, from the organization of representatives?

Mr. HADDEN. Yes, sir.

The CHAIRMAN. And your plant is a subsidiary of the United States Steel Corporation?

Mr. HADDEN. Yes, sir.

The CHAIRMAN. Very well, sir. File your statement. I understand that represents not only your own views, but the views of those who are here accompanying you, namely, A. W. Craig, Thomas A. Grogan, H. P. Fresch, and William W. Young, all of whom are representatives of employees in this plant?

Mr. HADDEN. Yes, sir.

The CHAIRMAN. All right. That statement may be filed with the committee.

(Mr. Hadden subsequently withdrew his statement, stating that he desired to present it orally tomorrow morning.)

Mr. HAHT. Mr. Chairman, we desire to return in the morning.

The CHAIRMAN. Your name is Louis E. Haht, general chairman of the employee representatives in the plant of the Acme Steel Co., located where?

Mr. HAHT. Chicago, Ill.

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The CHAIRMAN. And accompanying you is Mr. Walter Erxleben, who is chairman of the rules committee of that organization?

Mr. HAHT. Yes.

The CHAIRMAN. And you are asking to file a statement with the committee?

Mr. HAHT. We wish to return in the morning, Mr. Chairman.

The CHAIRMAN. You wish to return in the morning? All right. You may do so.

Now, the Carnegie Steel Co. Have you reached a decision? The spokesman is Earl W. Jenkins.

Mr. JENKINS. I wish to return in the morning.

The CHAIRMAN. Now, how about the Jones & Laughlin Steel Corporation?

Mr. WESTLAKE. We prefer to return in the morning.

The CHAIRMAN. Very well. You may do so.

We will adjourn until 10 o'clock tomorrow morning.

(The hour of 5 o'clock having arrived, the committee adjourned until tomorrow, Wednesday, March 27, 1935, at 10 a. m.)

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NATIONAL LABOR RELATIONS BOARD

WEDNESDAY, MARCH 27, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met, pursuant to adjournment at 10 a. m., in room 318, Senate Office Building, Washington, D. C., Senator David I. Walsh (presiding).

Present: Senator Walsh (chairman).

Also present: Senators Wagner and McCarran.

The CHAIRMAN. The committee will come to order.

Will the representatives of the American Sheet & Tin Plate Co. please come forward. Who is the spokesman for this group?

Mr. HADDEN. I am.

The CHAIRMAN. You will all please come forward and be seated.

STATEMENT OF WILLIAM B. HADDEN, REPRESENTING DEPARTMENT EMPLOYEES OF THE VANDERGRIFT WORKS OF THE AMERICAN SHEET & TIN PLATE CO.

The CHAIRMAN. Mr. Hadden, will you please give your full name for the record?

Mr. HADDEN. My name is William B. Hadden.

The CHAIRMAN. Where do you reside?

Mr. HADDEN. Vandergrift, Pa.

The CHAIRMAN. You are employed in what capacity?

Mr. HADDEN. Crane operator in the open hearth department of the American Sheet & Tin Plate Co.

The CHAIRMAN. What is the name of the particular plant at which you work?

Mr. HADDEN. The Vandergrift Works.

The CHAIRMAN. You were here yesterday?

Mr. HADDEN. Yes, sir.

The CHAIRMAN. You thought you would present your statement for the record without appearing in person yesterday, I believe.

Mr. HADDEN. We did not know how long we would be here.

The CHAIRMAN. And then you decided to present the statement in person today?

Mr. HADDEN. Yes, sir.

The CHAIRMAN. Have you a statement to make to the committee at this time?

Mr. HADDEN. Yes, sir.

The CHAIRMAN. Who are the others accompanying you? Will you please give their names for the record?

Mr. HADDEN. Harry P. Fresch.

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The CHAIRMAN. Mr. Fresch, are you one of the representatives of the employees' organization at this plant?

Mr. FRESCH. Yes, sir.

The CHAIRMAN. And what is your name, sir?

Mr. YOUNG. W. W. Young.

The CHAIRMAN. You are one of the representatives of the employees' organization at this plant also?

Mr. YOUNG. Yes, sir.

The CHAIRMAN. And what is the name of the next gentleman, please?

Mr. GROGON. T. A. Grogon.

The CHAIRMAN. You are also one of the representatives of the employees' association at this plant?

Mr. GROGON. Yes, sir; I am.

The CHAIRMAN. And what is the name of the next gentleman?

Mr. CRAIG. E. W. Craig.

The CHAIRMAN. You are also one of the representatives of this same employees' association?

Mr. CRAIG. Yes, sir.

The CHAIRMAN. Mr. Hadden, how many representatives are there altogether at this plant?

Mr. HADDEN. Approximately 3,200.

The CHAIRMAN. When did you have your last election?

Mr. HADDEN. June 1934.

The CHAIRMAN. How many votes were cast?

Mr. HADDEN. I have the percentage of the employees voting, and it is embodied in my statement.

The CHAIRMAN. You may then proceed with your statement.

Mr. HADDEN. I have been employed at the Vandergrift Works of the American Sheet & Tin Plate Co., Vandergrift, Pa., for 18 years. I am an ingot stripper crane operator in the open hearth department.

In June 1933 I was elected an employee representative from my department and later elected chairman by the representatives and have served in these capacities since that time, being reelected on June 1934. We have 3,200 employees in our plant.

At our last election 90.8 percent voted for representatives, as compared with 82.4 percent at the election in 1933; this shows the growing popularity of the representative plan. Our elections are by secret ballot and the plant is divided into voting districts according to our operating departments, with some smaller departments being combined. The elections are held exclusively under the supervision of the representatives with no interference from the management.

We have had splendid success with our representative plan.

We have discussed and settled with our management approximately 500 requests, and 65 percent have been settled in favor of the employees, and of the remainder 17 percent were not granted and the balance compromised or withdrawn. The representatives have had no complaints from our fellow workmen as to the methods of conducting the elections, and the vast majority are pleased with our collective bargaining results.

As chairman of our representatives, and speaking for them, I want to go on record with your committee as opposed to the Wagner labor relations act. We are opposed to any legislation that would

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effect the fine cooperation we have with our employers, and we believe this bill would stir up conflict in industry.

While forbidding coercion or intimidation by employers, and rightly so, it offers nothing to prevent labor organizations, their agents, or members exercising these very methods against employees. We resent the authority which would be granted the Board under this act to dictate or interfere in setting up new voting districts or calling for elections at its will. Our plan permits a recall of an unsatisfactory representative by two-thirds of his constituents. Our management has at all times been willing to confer with any individual or group on any subject arising out of their employment, and this privilege would be endangered by the adoption of this bill.

For some time past at our representatives' meetings we have invited fellow employees to attend in order to discuss problems concerning their working conditions and the operating practices with the result that our product is better, and this has resulted in increased business for our plant and better earnings for our employees.

In conclusion as workers we are keenly interested in promoting harmony in our business and increased operations of our plant and can see nothing helpful in the adoption of this bill.

The CHAIRMAN. Will the representatives from the Jones and Laughlin Steel Corporation please come forward and be seated. Who is the spokesman for this group of employees?

Mr. WESTLAKE. I am.

The CHAIRMAN. Will you give your full name for the record?

Mr. WESTLAKE. My full name is William Westlake.

STATEMENT OF WILLIAM WESTLAKE, CHAIRMAN OF EMPLOYEES' REPRESENTATIVE PLAN OF THE JONES & LAUGHLIN STEEL CORPORATION, ALIQUIPPA, PA.

The CHAIRMAN. Where do you reside, Mr. Westlake?

Mr. WESTLAKE. I reside in Aliquippa, Pa.

The CHAIRMAN. You are an employee of what industrial plant?

Mr. WESTLAKE. I am employed by the Jones and Laughlin Steel Corporation.

The CHAIRMAN. In what capacity are you employed?

Mr. WESTLAKE. Bricklayer.

The CHAIRMAN. You are also chairman of the employees' representation organization?

Mr. WESTLAKE. Yes, sir.

The CHAIRMAN. How long have you been chairman of this organization?

Mr. WESTLAKE. Twenty-one months, during the duration of the organization.

The CHAIRMAN. And these gentlemen here with you are also representatives of that organization?

Mr. WESTLAKE. Yes, sir.

The CHAIRMAN. May we have their names for the record? What is your name, please?

Mr. ARBUCKLE. James B. Arbuckle.

The CHAIRMAN. You are one of the representatives of the employees?

Mr. ARBUCKLE. Yes, sir.

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The CHAIRMAN. And what is your name, please?

Mr. JOHNSON. Samuel I. Johnson.

The CHAIRMAN. You are also a member of the board of representatives of the employees?

Mr. JOHNSON. I am, sir.

The CHAIRMAN. And what is the name of this next gentleman?

Mr. GRIMM. F. I. Grimm.

The CHAIRMAN. You are also a representative of the employees?

Mr. GRIMM. Yes, sir; I am.

The CHAIRMAN. And the name of the next gentleman?

Mr. MCCLURG. A. E. McClurg.

The CHAIRMAN. You are also a representative of the employees?

Mr. MCCLURG. Yes, sir.

The CHAIRMAN. Mr. Westlake, how many representatives has your organization?

Mr. WESTLAKE. We have 36.

The CHAIRMAN. How many employees are there in the plant?

Mr. WESTLAKE. Approximately 10,000.

The CHAIRMAN. Does your statement tell how many voted in these elections?

Mr. WESTLAKE. Yes, sir.

The CHAIRMAN. You may proceed with your statement.

Mr. WESTLAKE. Mr. Chairman and gentlemen of the committee, my name is William Westlake and I am chairman of employees' representation plan of the Jones and Laughlin Steel Corporation, Aliquippa, Pa. I am employed as a bricklayer and have worked in their plant since December 1909. Our employees' representation plan was inaugurated in June 1933, and I was elected as chairman of that body at that time and in June 1934 I was reelected. I appreciate this opportunity to appear before you and I hope that I may be able to express the sentiments of my fellow workmen who have appointed me to be their spokesman.

At our last election held in June 1934, out of an eligible voting list of 9,540, there were 9,048 votes cast in the primaries and 9,293 in the general eltcion. At the primaries there were 378 blank ballots cast and at the general election, 247 blank ballots. There were 2 votes cast for outside organizations at the primaries and 4 at the general election. Every precaution was taken to insure an honest election and no representative was allowed to serve on the election board in his or her own division.

The representatives have made a splendid record, as the following figures will show—

Disposition of cases:	*Percent*
Granted, 280	60.2
Explained or compromised, 35	7.5
Denied, 150	32.3

In addition to this number, many cases were settled by the representatives before reaching the management's representative's office. There are 88 unsettled cases now under consideration, making a grand total of 553 cases submitted for consideration during a period of 21 months.

Several months ago the Amalgamated Association filed charges of discrimination and coercion against the Jones & Laughlin Steel Corporation. This case was heard by the National Labor Board,

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Judge Stacey presiding. The Board rendered their decision exonerating the Jones & Laughlin Steel Corporation. Not one of the large number of Amalgamated witnesses said a word against our so-called "company union."

One of the cases settled by one of our representatives resulted in an increase of pay involving 8 or 10 motor inspectors, one of whom was the president and another the treasurer of the Aliquippa Lodge of the Amalgamated Association. Up until the present time, neither one of these men has refused to accept the raise in wages.

Our opponents claim that representatives are unable to successfully handle grievances, owing to their inexperience. Under the employees' representation plan, the representatives are chosen to represent the men with whom they work. By daily contact with the men and an inside knowledge of the working conditions in that department, it is my opinion that such a representative is naturally in a better position to successfully handle their problems than an outsider who may be unacquainted with the conditions under which these men work.

I am satisfied that our representatives are doing a good job, even though they are not receiving a fat salary. The only reward they receive is their regular rate of pay when doing work in connection with the plan. While outside organizations are concerned only with rates of pay, working hours and collection of dues, the representative of our plant have not only aided in the adjustment of rates of pay and working hours, they have also settled cases involving sanitation, safety, and working conditions. We have been instrumental in having bus rates and house rents reduced. Would an outside organization consider these matters worthy of their consideration? I do not think so. The harmonious relations existing between the representatives has resulted in convincing their fellow workmen that the organization will grow in effectiveness as the agency for adjusting their grievances.

A local lodge of the Amalgamated was instituted in Aliquippa last year, but their charter has been revoked by President Tighe because of some infraction of the rules. President Tighe sent one of the officers of the Amalgamated to Aliquippa to assist in the organization of a lodge, but he was withdrawn when the Pittsburgh papers published a story showing that he had been guilty of a criminal assault on his 10-year-old stepdaughter. Two weeks ago one of their members was found guilty of felonious assault and battery in the Beaver Court, after he had stabbed one of our employees because he refused to join the Amalgamated. It is not surprising that our workmen have shown their preference to our plan.

The present membership of the Federation of Labor is approximately 3,000,000, which is less than 10 percent of the industrial workers of this country. If, after all their years of existence, they have been able to convince only one-tenth of the workers of the United States that the American Federation of Labor was the most efficient agent for the adjustment of their working problems, would it be fair to pass the Wagner bill and thus give them an unfair advantage? It is for you to decide.

I thank you.

The CHAIRMAN. Will the employee representatives of the Carnegie Steel Co., please come forward?

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STATEMENT OF EARL W. JENKINS, CHAIRMAN OF EMPLOYEES REPRESENTATIVES OF CARNEGIE STEEL CO.

The CHAIRMAN. Mr. Jenkins, you are spokesman for this group?

Mr. JENKINS. Yes, sir.

The CHAIRMAN. The others who accompany you are William Carney, who is a representative?

Mr. JENKINS. Yes, sir.

The CHAIRMAN. And William Mohler who is also a representative of the employees association?

Mr. JENKINS. Yes, sir.

The CHAIRMAN. And also Joseph M. Sanders who is also a representative of this same organization?

Mr. JENKINS. Yes, sir.

The CHAIRMAN. And Earl W. Hall, who is a representative and secretary of the employee association?

Mr. JENKINS. Yes, sir.

The CHAIRMAN. Now, Mr. Jenkins, in what plant are you employed?

Mr. JENKINS. The Carnegie Steel Co., Youngstown, Ohio.

The CHAIRMAN. That is a subsidiary of the United States Steel Corporation?

Mr. JENKINS. Yes, sir.

The CHAIRMAN. Your particular position is what?

Mr. JENKINS. Railroad brakeman.

The CHAIRMAN. You are chairman of the board of representatives of the employees in their organization in that plant?

Mr. JENKINS. Yes, sir.

The CHAIRMAN. How many employee representatives are there in the plant?

Mr. JENKINS. Twenty.

The CHAIRMAN. Have you a statement you would like to present to the committee?

Mr. JENKINS. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. JENKINS. I have been in the employ of the Carnegie Steel Co. for 24 years. I am now a railroad brakeman in the transportation department, having served as a representative and as general chairman since the inception of the representation plan in June 1933.

In the Youngstown district 82 percent of the employees participated in the election of 1933, and in the election of 1934 the employees gave a vote of confidence in the plan when 91 percent participated.

The employee representatives have never received a request for the withdrawal of any representative as the plan provides for, and each employee has the right to speak for himself or to choose any one to represent him, without any majority dominating him, a right that every workman is entitled to, and the passage of the Wagner bill would certainly take that right away, which would further complicate the harmonious industrial relation which each workman wants.

As soon as an employee feels that he has a grievance he takes it up with his representatives and he in turn with the management, where it is quickly taken care of. In 19 months there has been 308 major cases, and as many more of a minor nature. There have been

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65 percent settled in favor of the employees, and there are 6,200 employees in the Youngstown district and 20 representatives. However, this number of representatives will be increased at the next election.

The employees' representative plan has been successful in bringing the employees and the management closer together, and the Wagner bill assumes there is a conflict between the workmen and the management that does not actually exist.

The CHAIRMAN. Will the representatives of the Acme Steel Co. please come forward? Who will be spokesman for this group?

Mr. HAHT. I will, Mr. Chairman.

STATEMENT OF LOUIS E. HAHT, CHAIRMAN OF REPRESENTATIVES OF THE EMPLOYEES REPRESENTATIVE PLAN, ACME STEEL CO. CHICAGO, ILL.

The CHAIRMAN. Will you state your full name for the record?

Mr. HAHT. Louis E. Haht.

The CHAIRMAN. You are chairman of the employees' representative plan of the Acme Steel Co.?

Mr. HAHT. Yes, sir.

The CHAIRMAN. Where is that plant located?

Mr. HAHT. Chicago, Ill.

The CHAIRMAN. Accompanying you is Mr. Walter Erxleben?

Mr. HAHT. He is here.

The CHAIRMAN. He is chairman of the rules committee and one of the representatives?

Mr. HAHT. Yes, sir.

The CHAIRMAN. You may proceed to present your statement, Mr. Haht.

Mr. HAHT. The purpose of the employees' representation plan is to provide a plan of representation which gives an opportunity for employees to have a voice with the management in considering jointly all matters pertaining to industrial relations—to establish a mutually satisfactory way of settling any differences which may arise between employees and management, including wages, shop rules, working conditions, safety, recreation, methods of economy or similar matters; to provide a means of friendly cooperation between employees and management on the basis of mutual confidence and understanding.

This plan of representation does in no way discriminate against any employee because of race, sex, or creed, or conflict with his or her right to belong to or not to belong to any lawful society, fraternity, or organization.

In our last election of candidates for representation, held February 7, 1935, 190 men, which is approximately 20 percent of the eligible votes, submitted their names as possible candidates, showing their willingness to serve as representatives.

The record of our plan during the 13 months that it has been operating is as follows:

CLASSIFICATION AND DISPOSITION OF REQUESTS MADE OF REPRESENTATIVES

Granted in full.—Wages, 9; working conditions, 14; discharges, 2; vacations, none; demotions, none; miscellaneous, none; total of dispositions, 25.

Refused.—Wages, 3; working conditions, 1; discharges, none; vacations, 1; demotions, 1; miscellaneous, none; total of dispositions, 6.

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Compromised.—Wages, 3; working conditions, none; discharges, none; vacations, 1; demotions, none; miscellaneous, 1; total of dispositions, 5.

Withdrawn.—Wages, none; working conditions, none; discharges, 1; vacations, none; demotions, none; miscellaneous, none; total of dispositions, 1.

Total of classification.—Wages, 15; working conditions, 15; discharges, 3; vacations, 2; demotions, 1; miscellaneous, 1; total of dispositions, 37.

Dated March 23, 1935.

This record proves that we actually have collective bargaining. At the present time we are receiving from 97 percent to 103 percent of the 1929 wage scale. There is a friendly feeling between the employees and the management.

We feel that if the Wagner labor disputes bill is passed, it would cripple our organization and destroy the good feeling that now exists between the employees and the management.

Under our representation plan the employees can amend its bylaws and have done so, and they can terminate it if they wish.

The CHAIRMAN. How many candidates did you say there were in the last election?

Mr. HAHT. One hundred and ninety.

The CHAIRMAN. How many were to be chosen?

Mr. HAHT. Eleven.

The CHAIRMAN. You may proceed.

Mr. HAHT. We believe the record of our plant since it has been in effect proves we actually have collective bargaining at the present time. We are receiving from 97 to 103 percent of the 1929 wage scale, and there is a friendly feeling between employees and management. We feel if the Wagner wage disputes bill is passed it will cripple our organization and destroy the good feelings that now exist between the employees and the management.

Under our plan the employees can amend their bylaws and have done so, and they can terminate the plan if they wish.

The CHAIRMAN. Thank you, Mr. Haht. This closes the testimony from the employees of the various steel companies which have been represented here. I would like to say in this connection that personally I have been very much impressed with the appearance, the sincerity, and intelligence displayed by the men who have represented the employees at these hearings. All of this is aside from the fact we may differ in our views, but I think the committee has been impressed with the intelligent type of American workmen who are capable of appearing before such a committee and stating their views.

Mr. Harriman, if you will please come forward the committee will be glad to hear from you.

STATEMENT OF HENRY I. HARRIMAN, PRESIDENT OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, WASHINGTON, D. C.

The CHAIRMAN. Will you give your full name for the record?

Mr. HARRIMAN. Henry I. Harriman.

The CHAIRMAN. You are appearing here in what official capacity?

Mr. HARRIMAN. On behalf of the Chamber of Commerce of the United States.

The CHAIRMAN. You are president of that organization?

Mr. HARRIMAN. I am.

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The CHAIRMAN. You may proceed, Mr. Harriman.

Mr. HARRIMAN. My statement will be brief, Mr. Chairman.

The bill before you is one of great importance. If enacted in its present form, it will have far-reaching effect and, in my opinion, will increase industrial discord and prolong the depression.

The bill is in many respects similar to the Wagner labor disputes bill of last year. That measure was finally dropped in favor of Public Resolution No. 44, to further effectuate the policy of the National Industrial Recovery Act. Under the provisions of that resolution the President was empowered to establish a board or boards, authorized and directed to investigate issues, facts, practices, or activities of employers or employees in controversies arising under section 7 (a), and such board was further authorized, when in the public interest, to issue orders for election, by secret ballot, of representatives of employees for collective bargaining. That resolution is in effect an amendment to the Industrial Recovery Act, with the basic principles of which I am thoroughly in accord.

My first and primary objection to the proposed bill, Senate 1958, is that it is unnecessary. All needed investigations and orders to insure fair collective bargaining can be made and issued under the powers conferred by last year's resolution.

You are now considering an extension of the National Recovery Act for the remainder of the emergency, and I hope that with certain essential amendments you will pass it. Such an extension of the N. R. A., plus the resolution of last year, will give ample opportunity to further study the problems of industrial self-government without the enactment of the new measure now proposed.

I have very definite objections to some of the provisions in the pending bill, the most important of which I will briefly enumerate.

In section 8 it says,

it shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees, or to interfere with fair collective bargaining.

Why should unfair labor practices be limited to the employer? I grant that the right of collective bargaining without coercion is a proper right of every employee, but he should be free not only from the coercion of his employer but from the coercion of the flying squadron, the racketeer, and others who would interfere with the real independence of the employee in selecting his agent for collective bargaining. My objection is not to the broadness but rather to the narrowness of the definition of an unfair labor practice. I would go much further than the bill goes and protect the employee from all forms of coercion; and whatever the history of the past may have been, I do not believe that for the last year the chief agency of coercion has been the employer.

The CHAIRMAN. Of course, the proponents of this bill make this distinction between coercion on the part of the employer and coercion on the part of the employee. They say that coercion on the part of the employer can be followed up by dismissal, that he has a hidden economic pressure power which he can apply if his coercion does not operate well, while in coercion of one employee against another, or an outsider against the employee, there is no such economic power.

An employer upon whom coercion is about to be exercised knows it will not interfere with his job, will not interfere with his livelihood; it may be uncomfortable to him, but he has a criminal remedy

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and can have the party who seeks to coerce him arrested and punished under the criminal law.

I thought you might be interested in knowing that distinction that is made, but perhaps you are familiar with it anyway.

Mr. HARRIMAN. I am familiar with it, and there is some force to it, as I shall say later.

I feel, after further experimentation and experience, it may be wise to create a labor court with a labor code, and definite rules binding upon both employers and employees, but I do not think we have quite experience enough for that.

The point you raise, it seems to me, is amply covered by the provisions of the resolution of last year under which we are now operating with reasonable success.

The CHAIRMAN. I was only attempting to give the explanation that the proponents of this bill give for not including as an unfair labor practice coercion on the part of one employee or outsiders against an employer. That coercion is criminal and punishable. The employee has no way of enforcing his coercion through economic pressure, while the employer has.

Mr. HARRIMAN. Even though we grant there may be greater economic pressure from the employer, we all have to admit that in the textile strike last year, for instance, great pressure was exerted in a very unfair way be the flying squadron, and through intimidating forces of other kind.

Now, why not prohibit them both, if you are going to have such a bill? One may be more important than the other, but we do not refuse to consider a law against one kind because there is another one greater. We do not refuse to pass laws against stealing because we do pass laws against murder.

The CHAIRMAN. In other words, it could be contended that certain labor agitation and coercion can amount to economic pressure on the employee who wants to work, by preventing him from working.

Mr. HARRIMAN. To the greatest degree, and the resort to the courts is so tedious, and the disputes are so hard to prove, that it is non-effective until the strike is over.

The CHAIRMAN. You may proceed.

Mr. HARRIMAN. Again I object to the creation of a National Labor Relations Board. If we are to have legislation, let us create a National Labor Relations Court, which hears in orderly fashion disputes between employer and employee, and in relation with such a court let us have a definite labor code, binding both upon employer and employee. The pending bill gives broad powers of investigation without waiting for complaint. That, in my judgment, is a mistake. A court hears complaints and evidence in connection therewith. It is practically impossible for an investigating board to give fair and impartial decisions. There is a function for a judge. There is also a function for a prosecutor, but they should not be united in one person if fair decisions are to be given.

Under the terms of the bill the new board would have power to supersede all of the special boards which have, from time to time, been created by the President in connection with industrial disputes. There is every evidence that these special boards have worked reasonably well, and that they have been particularly skill-

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ful in handling the exact matter under consideration. I should dislike to see the automobile board, or the newspaper board, or other special bodies dealing with industrial disputes in particular trades abolished.

The bill endeavors to set up the principle of majority rule, and says, in effect, that if 51 percent of a group of employees vote for certain representatives to deal in collective bargaining, the other 49 percent are thereby disfranchised. That is, in my judgment, un-American and unethical. There is a vast difference between a political right and the right to bargain for work, and they should never be confused. A man should have the right to bargain individually or collectively, as he may chose, and if several agencies are named for collective bargaining, certainly the employer should have the privilege of conferring with all of them. I recognize that eventually one agreement must be reached, but in arriving at a conclusion, there is is no apparent reason why each of the representatives chosen by employees should not have participation in accordance with the degree of his own representation.

I further doubt the propriety of giving to any board the right to determine the unit for collective bargaining. Under this authority the board might create as a unit for collective bargaining the shoe manufacturers of New England and of Missouri as a single unit, and, by a majority vote, force upon one section labor conditions that were not prevalent or desired by that section. In a given industry in a certain city, 60 percent of an industry might have open shop and 40 percent closed shop, or vice versa. There might be a dispute in one group and no dispute in the other. But if all should be combined in a single unit by order of the Labor Board, the range of a dispute might be much widened and conditions forced upon certain employees which they do not desire.

If my theory is correct that when a new labor dispute body is created it should be a court, then its function should be to hear parties to a dispute, and not to create disputes or bring to trial people who are satisfied with existing conditions.

Under the powers of investigation granted in the bill substantially every record of every employer in the United States could be open to the whims of roving investigators. This would be an invasion of personal rights, for which I think there is no constitutional warrant.

I have only touched upon a few of the most important of my objections to the pending bill, and I will not take your time to discuss other and less important features. I feel that we have not as yet had sufficient practical experience to determine whether the Federal Government can legally and should enter into the realm of industrial labor disputes, or whether these matters should be left to the State. Possibly our experience will show that a divided responsibility between these two agencies is wise. Possibly it will demonstrate the wisdom of continuing the policy of the past and of leaving such responsibilities to the States. We are now in a condition of flux. We are learning by actual experience. We should have important court decisions which will clarify many disputed constitutional aspects of the recovery act and its legal authority over productive industry.

If the Supreme Court reverses its decision in *Hammer* v. *Dagenhart* and decides that production is a part of commerce and that the

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Federal authority can regulate the conditions of production, and if our practical experience shall show that such a course is wise, then let us with due care create a labor disputes court with a carefully worked out labor code that will set up principles fair to employer and employee which such courts can adjudicate. Pending such legal decisions and such further experience, I submit that it is unwise to plunge further into the morass of doubtful legislation.

The CHAIRMAN. At this point in the record I have been asked to have presented statement of the Philadelphia Chamber of Commerce.

(The statment is as follows:)

STATEMENT OF THE PHILADELPHIA CHAMBER OF COMMERCE OF PHILADELPHIA, PA.

PHILADELPHIA CHAMBER OF COMMERCE,
Philadelphia, March 22, 1935.

MR. HENRY I. HARRIMAN,
President, Chamber of Commerce of the U. S. A.,
Washington, D. C.

MY DEAR MR. HARRIMAN: In connection with the Wagner disputes bill, we telegraphed Senator David I. Walsh asking that a committee of the Philadelphia Chamber of Commerce be heard with the opponents of the bill. However, in his reply he stated that the prolonged hearings last year and other hearings now on important measures would prevent the committee from hearing us separately. He advised that they would be pleased to print brief from us in the records.

* * * * * * *

We would appreciate it, therefore, if you would submit the enclosed statement for the record as coming from the Philadelphia Chamber of Commerce.

Very truly yours,

GEORGE W. ELLIOTT,
General Secretary.

MUTUALITY OF INTEREST

No one can be long and intimately concerned with the problems of relief unemployment, and of reemployment, management, and recovery without regarding sound industrial relations as a cornerstone of sure progress. Under the abnormal stresses and strains put on our system nowadays by sudden economic and political changes, there is no substitute for mutual confidence and understanding between workers and management where they meet, on the job. The welfare of both participants, as well as of the public, is to be promoted by increasing both the fact and the consciousness of that mutuality of interest in the direct, peaceful, and continuous development of the employment relationship in order that it may afford a constantly increasing service to all concerned.

Moreover, the very progress we have made on this basis of free and direct dealing, vouchsafed by our form of government, has made us perhaps the greatest of all industrial nations, but we must remember that in its nature this complicated industrial system is characterized by a degree of interdependence and delicate interadjustment which in the common interest must be maintained. By the same token, preservation and improvement of the system depend upon maintaining therein a degree of flexibility that will accommodate all the varying attitudes, abilities, and capacities of individuals to the economic machine, and correspondingly, the machine to changing conditions. This type and form of political and economic government is the one which we, as a people, chose and hold above all others, and fundamentally it is based upon mutuality of interest and complete freedom of individual choice.

THE FUTILITY OF FORCE

Conversely, this basic mutuality of interest and freedom of individual choice are incompatible with, if they are not destroyed by, any philosophy of human or economic relations which would substitute force for understanding, rigidity for flexibility, revolution for evolution, or compulsion for mediation. Thus, only those laws stay long on our statute books or remain effective which

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recognize that fundamental popular will or choice which is the source of all democratic sanction. If it is said that, with us, a law is unconstitutional, it is only another way of saying that it is unworkable and inconsistent with those principles of mutual interest and free individual choice upon which our whole structure of self-government is based.

THE WAGNER LABOR DISPUTES BILLS OF 1934–35

Because the Wagner labor disputes bill of 1934 (S. 2926), in our thoughtful opinion, overlooked the aforesaid facts and contained many consequent defects, the Philadelphia Chamber of Commerce opposed it. The reasons for that opposition are contained in the accompanying booklet[1] which is made a part of this statement. Specifically, we opposed that legislation because, in the face of our concepts of sound fundamentals, the bill proposed, among other things:

1. A national labor board with jurisdiction not only almost exclusive of appeal to our established courts, but with totally unprecedented powers in respect to the laws of evidence, the summoning of parties, the requisitioning of records, the holding of plant elections, the trial of causes, and the enforcement of decisions.

2. Placing all and many serious restraints on one party (the employer), thus virtually straitjacketing him, while

3. Placing no restraints upon organized labor while encouraging it to organize without restraint, without regard for its lack of legal or financial responsibility, without regard for the record or competence of its leadership, without regard for the right of individual workers to a free choice, and without regard for the social, economic, or political significance of the overriding monopoly and excesses it would stimulate.

4. Illegalization of the company unit relationship, and where a majority of workers were organized in an outside union, illegalization of direct dealing in any matter of wages, hours, or labor disputes, notwithstanding the basic fact that such relationships, properly and naturally motivated, constitute the very foundation and essence of sound and friendly industrial progress.

For such reasons, the Philadelphia Chamber of Commerce opposed the Wagner labor disputes bill of 1934, and, insofar as they apply to the pending proposal, it reaffirms that opposition now.

A new Wagner bill (S. 1958) is now proposed which, in further violation of what we hold to be sound, acceptable, and workable under our social and economic system, outdoes even its predecessor in certain respects, among which are the following:

1. It would expand the scope and power of the National Labor Relations Board by—

(*a*) Extending its jurisdiction to all employments (excepting agriculture, domestic service, railroads, governments, families, and curiously, labor organizations) regardless of size or codes, and to all disputes or imminent disputes which may affect interstate commerce, even indirectly.

(*b*) Making it (the Labor Board) an independent agency in the Executive branch of the Federal Government, and exclusive and supreme over any other means of adjustment or prevention, except that—

(1) United States district courts, solely at the request of the Board, "may institute proceedings to prevent and restrain any unfair practices", and

(2) The circuit court of appeals may impeach the Board's decision but only on the law, not on the evidence, even though such evidence be only rumor or hearsay. Note section 10 (c) which provides "the rules of evidence prevailing in courts of law or equity shall not be controlling."

Nor would an appeal operate as a stay on the Board's order unless specifically ordered by the court.

(*c*) Empowering it to decide as to the proper unit of collective bargaining and the choice of employee representatives whenever it pleases to order elections; to require the appearance of witnesses and the production of evidence at any point in the United States on the unreasonably short notice of 3 days; to amend its complaints at any time before its order is issued, even after witnesses have been heard; and to receive from any department or agency of the Government all records relevant to any matter before the Board even

[1] Statement on the Wagner-Connery labor disputes bill (S. 2926, H. R. 8423), Philadelphia, Pa., Mar. 20, 1934.

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though they have been secured by the government under assurance of nondisclosure.

"2." In the zeal of its proponents to promote collective bargaining, the bill would establish the principle of majority rule within any unit chosen by the Board; would legalize the closed unit, thus forcing all employees to join the labor organization of the majority or lose their jobs; would extend all rights of collective bargaining to an organized minority group or groups pending the selection of majority representatives—thus acting as a one-way valve for labor organization while corresponding employer rights are significantly omitted. The pending bill further goes out of its way to encourage agitation by recognizing disputants within its jurisdiction or protection, regardless of whether they stand in the proximate relation of employer and employee; and like its 1934 predecessor, it continues to regard as an employee a person who voluntarily and without notice chooses to forfeit that standing by striking.

3. Finally, instead of safeguarding their fundamental rights, the bill goes far to deny to workers and employers alike free choice without coercion from any source; while protecting the right to strike, it completely avoids protecting the peaceful worker's right to work; and in deference to the agitator and racketeer as well as the paid organizer, it carefully ignores the principle that equal responsibility and accountability are prerequisite to fair dealing.

Because the pending Wagner labor disputes bill of 1934 thus identifies itself with a philosophy of arbitrary force, and thereby indicts itself as inconsistent with the basic considerations of free choice, initiative, and fairness which alone make for peaceful and permanent solutions under our system, we hold that it has no place in our system.

COMPULSION V. MEDIATION

With international relations again reminding us of the futility of force, it is at least strange to see brought forward, under high sponsorship, this attempt at compulsion which can only defeat or postpone the industrial peace and prosperity we all so earnestly desire. That both the past and present chairmen of the National Labor Relations Board acknowledge the essential unenforceability in industrial relations of even the degree of judge-made law we now have, only emphasizes our own conviction that the real solution is not to be found in any higher degree of compulsion.

It is a commonplace of regional labor board experience, moreover, that the effectiveness of those boards as mediators waned from the day of the ruling that they should be looked to for binding decisions. And this sag in effectiveness was experienced when the boards are empowered to deal only with the fractional number of cases that are provable under section 7 (a). It therefore seems all too clear that the proposed extension of the Board's compulsory jurisdiction to practically all industrial labor disputes may be expected increasingly to develop demands and crises beyond the power of any such machinery to handle when we consider the present state of our national thought, social organization, and economic condition. Anyone conversant with labor relations knows only too well that, whether weak or strong, no participant to a labor dispute long abides by compulsory outside methods or awards, for such arrangements in their essential character have no natural relation to the job that serves both participants. As for the compulsory bargaining which the bill mainly seeks to achieve, it is, in fact, a flat contradiction of terms. Note the wise observation of the United States Coal Commission of 1923,[2] that compulsion in this field of industrial relations "even though it should by chance bridge over some serious conflicts, would give rise to the almost overwhelming difficulty of obtaining by force effective service from men who do not want to work or effective management from men who do not want to operate."

No! Industrial peace and constructive solutions do not lie up the compulsory road. The farther we try to go in that direction, the more resistance we will encounter, and we will eventually run up against a dead end.

What road, then, shall we take? If the answer is really wanted, we believe it can be found no farther away than in the experience of the Philadelphia Regional Labor Board, whose panel system of mediating those disputes that could not be settled on the job has been repeatedly called one of the great contributions of the country's recent labor experience. The Philadelphia idea was simply this: That sound and lasting solutions are most surely to be found

[2] P. 1381, in speaking of compulsory arbitration.

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in that community of interest developed by continuing and intimate negotiation in terms of the common job that serves the interests of all concerned.

In other words, we repeat our conviction that under our system there is no substitute for mutual confidence and understanding between workers and management where they meet, on the job, and that this relationship can only be worked out successfully, case by case, with the assistance of a mediating body when agreement otherwise seems impossible.

In contrast, by its own terms, the proposed Wagner bill would only wedge apart the mutual interests of employer and employee at that very point. It would encourage that outside leadership which all too often has no proper relation to or knowledge of the task. It would tend through this artificial organization to substitute conflict for cooperation; and it might confidenly be expected to provoke this result on a scale which would disrupt the operation of the industrial machine, increase unemployment, and so defeat the peace and prosperity that we seek.

In other words, we hold that the pending Wagner bill would undermine the very cornerstone of sound industrial relations by substituting force for free action, rigidity for flexibility, revolution for evolution, and compulsion for mediation. The Philadelphia Chamber of Commerce, therefore, opposes and protests the bill as undesirable, un-American, and unworkable.

The CHAIRMAN. Is Mr. A. L. Viles present; please come forward, Mr. Viles?

Mr. VILES. Mr. Chairman, if we may have your permission, Mr. P. W. Litchfield, president of the Goodyear Tire & Rubber Manufacturing Co., will make the presentation on behalf of the rubber industry and the Rubber Manufacturers Association.

The CHAIRMAN. That may be done.

STATEMENT OF P. W. LITCHFIELD, PRESIDENT OF THE GOODYEAR TIRE & RUBBER CO., AKRON, OHIO, AND REPRESENTING THE RUBBER MANUFACTURERS ASSOCIATION

The CHAIRMAN. Mr. Litchfield, your full name is P. W. Litchfield?

Mr. LITCHFIELD. Yes, sir.

The CHAIRMAN. You are appearing before this committee in behalf of the Rubber Manufacturers Association?

Mr. LITCHFIELD. Yes, sir.

The CHAIRMAN. What is your own personal occupation?

Mr. LITCHFIELD. President of the Goodyear Tire & Rubber Co.

The CHAIRMAN. The Rubber Manufacturers Association consists of how many members?

Mr. VILES. Approximately 150.

The CHAIRMAN. They represent the owners of rubber manufacturing plants in all parts of the country?

Mr. VILES. That is right.

The CHAIRMAN. And you are presenting their views to this committee, Mr. Litchfield?

Mr. LITCHFIELD. Yes, sir; I am presenting the views of the Rubber Manufacturers Association to this committee.

The CHAIRMAN. You may proceed.

Mr. LITCHFIELD. The rubber industry herewith presents its views concerning the proposals contained in S. 1958. As this statement of views will be confined entirely to a discussion of the principles underlying the provsions of the bill, it is unnecessary to comment upon its detailed provisions.

The premise upon which the bill is constructed seems to presuppose the existence of an unalterable, antagonistic attitude between employer and employee which cannot be changed, compromised, or

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abated in any manner except through the agency of the Federal Government.

We cannot agree that this premise is sound or that it can be substantiated by actual conditions prevailing in the industries of this country.

The bill also seems to assume the existence of a power which we believe the Federal Government does not possess.

Under the broad provisions of the bill all employer-employee relations, even to the minutest detail, would be placed completely under the jurisdiction of agencies created by the Federal Government, subject to any rules or regulations such agencies might prescribe. We question the authority of the Federal Government to assume jurisdiction over questions of this character. Also, we question the practicability of the proposals even though there were no question concerning the assumption of jurisdiction by the Government.

Purely from the standpoint of practicality alone, we believe that if the Government should attempt to regulate through the agencies proposed and through the issuance of inflexible rules and regulations, followed by judicial decisions, all the varied questions of employer-employee relations that constantly arise, the results would inevitably be a confused and chaotic situation in such relations in all types and sizes of establishments that would be unprecedented in the industrial history of the country.

A law such as proposed would be welcomed by irresponsible persons who would seize the opportunity, under the law's provisions, to parade as responsible representatives of labor and foment discord between employers and employees for their own benefit and profit, with consequent damage to the public interest.

The bill seems to be based entirely upon a number of assumptions which do not have a foundation in fact. The primary ones are discussed below:

1. The provisions of the bill seem to assume the existence of an eternal conflict between employers and employees. Because of the suppositions upon which it appears to be based it logically follows that the bill would restrict the normal relationships existing between employers and employees which have been evolved through experience and constant development during many years and which are so essential for the maintenance of peace in industry. As a substitute for the present relations, the bill would open the door for agitators who would be afforded an opportunity of using the suggested powers of the Federal Government to give color to the asserted existence of situations requiring correction which, in a majority of cases, are in fact nonexistent.

2. The bill presupposes that better working conditions for employees would result from its enactment, otherwise it would not be offered for adoption. We disagree with such an assumption because the bill is in no way designed to create better working conditions, not will it control or eliminate the activities of the irresponsible professional agitator.

3. The bill provides for "collective bargaining" as it has come to be ordinarily understood through attempted definition by law. The most desirable relationship between employer and employee should

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not be on the basis of this form of collective bargaining, but rather on a cooperative basis, which can and has been worked out on the basis of mutual understanding between countless thousands of employers and employees in this country because both parties have been jointly interested in the welfare of the enterprise in which they are mutually engaged. No law can become a substitute for such mutually satisfactory relationships.

4. The bill seems to presuppose that the majority of employers are exploiting labor, or will do so whenever they are afforded such an opportunity. The actual conditions existing in industry as a whole do not substantiate such suppositions and present-day conditions in industry do not require the enactment of the suggested legislation that would place employer-employee relations in a straight-jacket.

5. The principles embodied in this bill seem to assume that the majority of employees desire their relationship with employers to be based upon conflict, instead of on cooperation.

This is not true of the majority of employees, but on the contrary, there is sufficient evidence to indicate that the vast majority of employees wish to continue the present friendly, cooperative relationship with employers through the various existing voluntary organizations, and that they are not seeking the aid of the Federal Government to establish new agencies to supersede the present ones for purposes of regulating relationships and agreements with employers. The rubber-tire manufacturing industry is operating on a higher average hourly rate than are most other industries. It has been operating on an 8-hour maximum work day for more than 15 years. These results were obtained by the close cooperation of employers and employees and not with the assistance of organized labor, or Federal Government supervision.

6. The bill is very specific as to the rights of dissatisfied employees and specifically prohibits employers from engaging in unfair labor practices, as defined. No thought has apparently been given to the rights of employers, or to their employees who may be dissociated from a particular complaint, or to the protection of employers and employees against the coercive or other unfair practices of other employees with whom they may be temporarily in disagreement.

We submit that, in all fairness an employee who desires to work should be protected in the exercise of that right without restraint, and an employer's right to conduct his business free from improper restraint or coercion should be adequately protected.

We urge the adoption of a report disapproving this measure.

The CHAIRMAN. I have a request signed by T. V. Conway and W. E. Ogren, representing the Association of Employees Long Lines Department, American Telephone & Telegraph Co., the communication reading as follows:

> We represent a group of people who desire to submit testimony before your committee in regard to the proposed National Labor Relations Act, and respectfully request that our names be placed on the calendar in order that we may be heard as opponents of the bill.

Are Mr. Conway and Mr. Ogren present?

Mr. CONWAY. Yes; we are present.

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STATEMENTS OF T. V. CONWAY AND W. E. OGREN, REPRESENTING ASSOCIATION OF EMPLOYEES, LONG LINES DEPARTMENT, AMERICAN TELEPHONE & TELEGRAPH CO.

The CHAIRMAN. Where do you gentlemen live?

Mr. CONWAY. I live in Toledo, Ohio.

Mr. OGREN. I live in Chicago.

The CHAIRMAN. You have come all of the way here to appear here before this committee without having your names on the calendar.

Mr. CONWAY. Yes; we have.

The CHAIRMAN. Which one of you will speak?

Mr. CONWAY. I will speak, Mr. Chairman.

The CHAIRMAN. I believe you say you reside in Toledo, Ohio?

Mr. CONWAY. Yes, sir.

The CHAIRMAN. What is your occupation?

Mr. CONWAY. I am an employee of the American Telephone & Telegraph Co. in the plant department.

The CHAIRMAN. What position do you hold, Mr. Ogren?

Mr. OGREN. I am in the traffic department.

The CHAIRMAN. Of the American Telephone & Telegraph Co.?

Mr. OGREN. Yes, sir.

The CHAIRMAN. Do either of you represent any organization or association of employees?

Mr. OGREN. We represent an association of employees.

The CHAIRMAN. Is there an organization among the employees of the American Telephone & Telegraph Co.?

Mr. OGREN. In the long lines department of that company there is an association.

The CHAIRMAN. That is the department both of you gentlemen represent?

Mr. CONWAY. Yes, sir.

The CHAIRMAN. What kind of an organization is it?

Mr. CONWAY. It is an association of employees. The title is, Association of Employees, Long Lines Department, American Telephone & Telegraph Co.

The CHAIRMAN. Have you local units, or is it only a Nation-wide organization?

Mr. CONWAY. It is a Nation-wide organization wherever the company has offices. We have over 200 branches.

The CHAIRMAN. One of you gentlemen represent the Toledo branch and the other represents the Chicago branch?

Mr. CONWAY. I am here as chairman of the general executive board of the association of the employees, that being the highest body in our organization.

The CHAIRMAN. You represent all of these local units of the organization through the general board?

Mr. CONWAY. That is correct.

The CHAIRMAN. Of which you are chairman?

Mr. CONWAY. That is correct.

The CHAIRMAN. The other gentlemen is secretary?

Mr. OGREN. I am a member of the board.

The CHAIRMAN. How many members are there on the board?

Mr. CONWAY. There are eight members on the general executive board, which is the highest body.

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The CHAIRMAN. How are you selected?

Mr. CONWAY. We are selected step by step, the organization starting at the bottom with the branches which connect to the higher bodies, termed the "district board" and the district board in turn elects divisional council, and so on to the top of the organization.

The CHAIRMAN. How many members are there in the entire organization?

Mr. CONWAY. Approximately 10,000.

The CHAIRMAN. And you have about 200 units?

Mr. CONWAY. That is correct.

The CHAIRMAN. Has the organization a constitution and bylaws?

Mr. CONWAY. Yes, sir.

The CHAIRMAN. What, briefly, do they provide for?

Mr. CONWAY. They provide the form of the organization and the methods of holding elections and designate the various bodies in the organization.

The CHAIRMAN. Do the members in the local unions pay dues?

Mr. CONWAY. No, sir.

The CHAIRMAN. How are they inducted into membership?

Mr. CONWAY. After they become employees of the American Telephone & Telegraph Co. in the long-lines department, if they so desire they may become members of this organization.

The CHAIRMAN. By filling out an application or just by participating in elections?

Mr. CONWAY. By filling out an application.

The CHAIRMAN. And that is passed upon by the officers of the local union?

Mr. CONWAY. That is correct.

The CHAIRMAN. And that makes them eligible to participate in elections?

Mr. CONWAY. That is correct.

The CHAIRMAN. Do you have elections in the local unions?

Mr. CONWAY. There are elections in the local unions.

The CHAIRMAN. How often?

Mr. CONWAY. Once a year.

The CHAIRMAN. How long has this form of organization been in existence?

Mr. CONWAY. For 15 years; since 1919.

The CHAIRMAN. Is the voting in the elections secret?

Mr. CONWAY. Yes, sir.

The CHAIRMAN. Do the men have meeting places and quarters?

Mr. CONWAY. Yes, sir.

The CHAIRMAN. Where are they?

Mr. CONWAY. The meeting places and quarters in the local branches are in the buildings where we are employed usually; although if we wish to meet outside we can make arrangements to meet in other quarters.

The CHAIRMAN. But the practice has been to meet in the company quarters?

Mr. CONWAY. That is correct.

The CHAIRMAN. Do any of the officers or representatives of the employees, in any stage in their official position, receive any compensation from the American Telephone & Telegraph Co. or any of its subsidiaries?

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Mr. CONWAY. No, sir.

The CHAIRMAN. How are you paid for the time and attention you give to this work?

Mr. CONWAY. No deductions are made from my regular salary while I am on association work.

The CHAIRMAN. That is true of the men in the local unions also?

Mr. CONWAY. Yes, sir.

The CHAIRMAN. Do they meet during working hours or at night?

Mr. CONWAY. Sometimes during working hours and sometimes at night, in accordance with whatever time the executive committee of the local body may call the meeting.

The CHAIRMAN. When they meet at night are they paid?

Mr. CONWAY. No, sir.

The CHAIRMAN. Only when they are meeting during their own working hours for the purpose of this organization are they given any pay, and that is the amount they would have received if they were working?

Mr. CONWAY. That is correct; no deduction is made from salary if they meet during working hours.

The CHAIRMAN. Do your employers contribute in any other way or manner to your organization?

Mr. CONWAY. We negotiate—and when I say "we", I mean the hired body of our organization—with the management once each year on a budget. We negotiate for the amount of expenses we will need during the coming year, and after that budget has been negotiated the administration of the funds is vested entirely in the association of employees.

The CHAIRMAN. What was the budget for last year?

Mr. CONWAY. Last year the expenses ran approximately $72,000.

The CHAIRMAN. For the whole association?

Mr. CONWAY. That is correct.

The CHAIRMAN. Was that paid for by the company?

Mr. CONWAY. That is correct.

The CHAIRMAN. Was that paid in one lump sum to your treasury?

Mr. CONWAY. No; it was vouchered by the employees incurring the expenses, and the administration of the vouchering of these funds is in the hands of the chairmen of the various bodies.

The CHAIRMAN. That is a rather large sum of money; what was it used for?

Mr. CONWAY. Traveling expenses, expenses of meetings in the 200 branches, running the local branches, the hotel bills, and secretarial expense. We maintain a large secretarial headquarters in New York.

The CHAIRMAN. Where secretaries are hired, stationery used, and information sent out to the different members of the organization throughout the country?

Mr. CONWAY. That is correct. The secretary's office is under the supervision entirely of the organization of employees.

The CHAIRMAN. Could you furnish us a copy of the treasurer's report of the organization?

Mr. CONWAY. I don't know that I have one; but if I haven't it here, I will see it is furnished.

The CHAIRMAN. You may proceed with your statement, Mr. Conway.

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Mr. CONWAY. Mr. Chairman and members of the committee, we represent an organization of approximately 10,000 employees, known as the Association of Employees, Long Lines Department, American Telephone & Telegraph Co., and have been authorized to propose to this committee a change in paragraph 2, section 8, of the proposed bill, S. 1958.

It is not our desire as an organization of employees to oppose or to discuss any other provisions of this bill. Quite naturally, our individual members have varying opinions concerning each part of the bill; and it would be difficult to ascertain and present a majority opinion concerning each item, and particularly concerning any provision that may have political significance.

Concerning the discussion of the relative merits of company unions versus other unions, it is not our desire to oppose or criticize the so-called "regular union." We may say that the majority of our people believe that those organizations are not only desirable but quite necessary, in a large number of cases, to adequately safeguard labor. We do, however, believe that our organization meets our needs, and we do not wish to see enacted any legislation that would seriously interfere with our method of handling our problems.

We wish to outline the set-up and the history of the functioning of our organization in order to provide the background for our satisfaction with our present plan and to satisfy this committee that we are doing what is expected of a conscientious labor organization, which, as we see it, is to constantly improve our members' standard of living and, in doing so, exercise a real appreciation of our responsibilities affecting our industry and the industrial health and peace of the Nation.

The Association of Employees was formed December 31, 1919, by employee representatives chosen by the employees. Membership in the association has never been a condition of employment nor of participation in our pension and benefit plans.

It has been, from time to time, constitutionally developed and strengthened at our own initiative to more effectively serve the employees.

In order that insofar as possible our dissatisfactions may be settled at their source, our organization closely parallels the management organization. Local branches, our basic unit body, are established in the communities where our employees are located, higher bodies being successively district, division, department, and general boards. Officers are elected by each body.

Representatives are sent from each body to the next higher body, composed of such representatives, and are elected from and by the members of the body being represented. Management people, roughly defined as those having the right to hire and fire, are not permitted membership and may not attend or participate in the elections or business meeting of any bodies.

We have never known or heard of any attempt on the part of the management to influence any election of officers or representatives. We constantly use a provision made for carrying cases progressively to higher bodies when agreements satisfactory to employees are not reached with the management in lower bodies.

There are no restrictions within our own organization as to what type of question we may negotiate with the management nor has the

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management ever shown any reluctance to negotiate any type of case with us.

Association members are responsible only to the association for their acts in connection with the functioning of the association. Meetings are regularly scheduled, monthly for the branch executive committees and annually and semiannually for the higher bodies. Special meetings are called at the discretion of the association. The officers and representatives are excused without loss of pay to perform their association duties.

The association annually negotiates with the management a budget covering the succeeding year's association expenses and is responsible for the administration of the association's financial expenditures.

We believe that this organization can continue exactly as at present should this bill be passed as proposed with the exception of the proposed paragraph 2 of section 8. It is our conviction, based on our experience, that an employer can financially support an employee organization without violating any of the other provisions of this section. We therefore recommend that paragraph 2 of section 8 of this bill be changed to read as follows:

> To dominate or interfere with the formation or administration of any labor organization or to contribute financial or other material support to it by compensating anyone for services performed in behalf of any labor organization, or by any other means whatsoever, except that it shall not be an unfair labor practice for an employer or anyone acting in his interest to contribute such financial or material support provided that an agreement is made between the employer and the labor organization covering such material support by the employer for a definite period of not less than 1 year subsequent to the date of making the agreement.

We do not believe that the act of financial support has of itself any subversive effect on the functioning of any labor organization or on the members of such an organization. The controlling effect of such support could be brought to bear if the labor organization had to obtain their company's approval for expenditures on each action they desired to take as the need for such action presented itself. With a prior agreement covering expenditures, this controlling effect is eliminated to just the extent the labor organization feels is essential. By this I mean that under the other provisions of the bill and under section 7–A of the National Industrial Recovery Act the employees are free to organize as they choose and if they cannot obtain a financial support agreement suitable to their needs they may organize in any manner they desire.

For 15 years we have handled the problems of our members scattered in groups of various sizes throughout practically the whole of the United States. In this period we have constantly improved our standard of living, have settled our cases peacefully, and have been a real asset to ourselves, to the industry, and to the Nation. We know that we have the necessary ability within ourselves to handle our problems and have the intelligence to decide for ourselves the type of organization we want for collective bargaining. We have no feeling of asking for a paternalistic favor when negotiating our annual expense budget with the management and handle that detail with the same freedom as any other case furthering our interests.

Our record seems to justify, by those responsible for the guidance of our country, a careful consideration before eliminating such or-

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ganizations as ours from their very evident field of usefulness and we ask a continuation of our right to make for ourselves those decisions affecting us as do those matters covered by this bill.

These statements are in intent and purpose the same as those made on April 4, 1934, by a representative of our organization who appeared before the United States Senate Committee on Education and Labor and submitted a statement of our views regarding the then proposed Wagner Labor Disputes Act, S. 2926.

Senator WAGNER. Under your constitution is a representative of the workers limited to one employed in the telephone company?

Mr. CONWAY. That is correct.

Senator WAGNER. Your workers could not, under the constitution, if they chose to, vote for anybody outside of anyone employed by the company?

Mr. CONWAY. Not as a representative; no.

Senator WAGNER. And your opinion is, that unless you are financed by the employer you cannot continue to exist?

Mr. CONWAY. That is not our opinion. If this bill should go through it is my opinion we would make every effort to form another organization along the same lines, probably self-supporting; that is, necessarily self-supporting if this bill went through.

Senator WAGNER. As I understood you, and I think you are correct in that, that outside of the restrictions of not aiding or supporting financially by the employer, there is nothing to restrict your organization?

Mr. CONWAY. That is correct.

Senator WAGNER. You know my views of workers who are financially supported by the very men they are required to negotiate with for their fellow workers. You gentlemen are representatives of the employees, and your expenses are paid by the company when you travel?

Mr. CONWAY. That is correct; they are a part of the budget we negotiate.

Senator WAGNER. When you travel do you get both your traveling expenses and also your wages?

Mr. CONWAY. Yes, sir.

The CHAIRMAN. Is there anything further?

Mr. CONWAY. I have nothing further to say, Mr. Chairman.

The CHAIRMAN. Mr. Dunbar, if you will please come forward, the committee will be glad to hear you.

STATEMENT OF HOWARD W. DUNBAR, WORCESTER, MASS., REPRESENTING THE NORTON CO.

The CHAIRMAN. Your full name is Howard W. Dunbar?

Mr. DUNBAR. Yes, sir.

The CHAIRMAN. Your residence is Worcester, Mass.?

Mr. DUNBAR. Yes, sir.

The CHAIRMAN. You are appearing here as the representative of the Norton Co. of Worcester, Mass.?

Mr. DUNBAR. Yes, sir.

The CHAIRMAN. What is your position with that company?

Mr. DUNBAR. I am manager of the machine division.

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The CHAIRMAN. What product does the Norton Co. manufacture?

Mr. DUNBAR. The Norton Co. manufactures various products, but I am only concerned with grinding machinery.

The CHAIRMAN. You have a statement you wish to present to the committee?

Mr. DUNBAR. Yes, sir.

The CHAIRMAN. You may proceed with that statement.

Mr. DUNBAR. I seek to be heard before your committee in opposition to the Wagner labor disputes bill, S. 1958, because I come from an industry whose history reveals the fact that relations between management and men have been cordial, pleasant, and enduring for many years. Through these years we can say we have been free from labor disputes and labor troubles. This condition exists because of the high plans and standards of ethics upon which our business is conducted, and without the intervention of company union, labor union, or any other form of organization. Our relationship with labor is good because we have paid good wages and been fair in our treatment of our men. I am not appearing before your committee to fight labor or the American Federation of Labor.

In our industry there is a fraternal background, due to the skill, refinement, and perfection with which our products are fabricated, which knits together the management and its skilled operators, who face the problems of their industry with steadfastness and determination, borne of the satisfaction which comes from having created something with which to serve industry. For machine tools, after all, are the master tools of industry, upon which the very existence of many other industries depends.

We have successfully adjusted ourselves to the National Recovery Act as reflected through the codes which regulate the conduct of our business today. And therefore the question arises: "Why disturb the fundamentals of N. R. A. which have now been mastered and are understood by industry? What emergency arises at this time that prompts the introduction of a bill such as the one before this committee"? The watchword of the administration is "Recovery". The passage of such needless legislation contributes nothing constructive to this program, but on the other hand I believe will retard recovery.

Section 7 (a) of the National Recovery Act permits collective bargaining. And if collective bargaining means anything, it starts on the premise that the individual workman shall have the right to select his own representative as he sees fit, from within or without the walls of the establishment in which he works. Many of the labor difficulties of the past have been in plants in which a small minority have attempted to impress their will not only on their employers but on their fellow workmen as well. To frequently this pressure is promoted from without and has come in the worst form of coercion.

Extension of this power from outside forces, as possible under the Wagner bill, would be resisted by many of the workmen within our plants, and would bring on more conflict, less production, higher cost, fewer orders, less employment—and what it equally important a lessened use of the products of our factories on the part of our customers.

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The machine tool business is a highly technical and skilled process. One operation depends upon another, not only within the specific plant but in plants from which it gets its supplies, and in the plants of customers to whom it sells. One essential factor, therefore, in keeping production flowing, and consequently men employed, is that all processes within a plant and the plants of its vendors and its customers be sustained in every detail. The delay in the production of an apparently minor part, or interference with a seemingly unimportant process may tie up the entire train of production and throw a large number of men out of work.

To correlate properly these processes and keep production flowing is a function of management, and these processes cannot be kept going smoothly and efficiently unless management is completely in control of those whose duty it is to keep the production under way.

Dual responsibilities, such as would be brought into American industry if workmen were responsible first to an outside organization, and second to the firm employing them, would tie the employer's hands, and would bring about conditions under which it would be almost impossible to manufacture on the modern basis. This principle, although it may not be voiced by workmen in our shops, is well understood by them, and I believe it is for this reason that so many of our hardheaded thinking workmen desire not to be embroiled with an outside organization, whose interest is not to keep production flowing but rather to enhance its powers by increasing the membership, even to the point of the closed shop, which means absolute control.

It is my opinion that a closed shop in any American manufacturing industry would surely result in the same situation that now exists in the building industry, which is highly organized and from which we should take a lesson. In this industry exorbitant hourly wages and restricted output have held the cost of building construction to such a point that people are neither able nor willing to buy.

It seems to me the whole principle of fair contracts is disregarded in the Wagner labor disputes bill. The very essence of this act lies in the labor-relation restrictions imposed upon the employer, while it establishes no limit or control with respect to labor or the labor organizer. A performance contract of any kind, which has the effect of giving to one party an advantage over the other, has no equity and results disastrously. The party who is given the advantage in a contract wants to get everything out of it he possibly can. The other party, sensing the unfairness, uses every possible loophole to resist not only the letter of the contract but the spirit of it. The ultimate result of such an agreement is extreme confusion, conflict, and hard feelings. It is only through mutually fair agreements that progress for the benefit of both parties to the contract can be made.

The bill ignores the fundamentals of equal and legal rights and surely falls in the category of a lopsided measure. It legalizes the the closed shop, imposing by majority rule the will of the majority on the minority.

At this point I would like to expand on that thought.

The question might be asked, if I did not agree with the principle of majority rule, and I would like to answer that question in my own

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way, and say that I will not take too much of your time in that connection, because I have set down on paper my answer.

That answer is, I do believe in the majority rule. This is made as a general statement and depends on circumstances. As a citizen it is my civic right to exercise my power of vote as all citizens have this equal right to express their wish at will.

In the matter of civic affairs, national, State, township, government, clubs, association, and so on, the majority rule is quite properly the only basis for government within the limit of the constitution specifically arranged for the protection of the minority.

But when it comes down to a contractual right it is quite a different matter.

Terms of employment constitute a contract between the employer and the employee and fundamentally constitute individual relation between employer and employee governed by the terms of the contract, and whether written or oral it remains a contract, and the terms and rules are unstated or stated.

Would anyone in business or in personal affairs write a blank ticket and hand it over to someone else with authority to fix the terms of a business deal, particularly if that third party were to benefit by the manner in which the terms of agreement were fixed?

Senator WAGNER. I do not want to get into a controversy, because it does not do any good when we have opposite views on some things, but do you think an employer who employs 5,000 men, we will say, when one of those employees is dealing individually with the employer, is on an equality with the employer in bargaining power?

Mr. DUNBAR. I did not get the last part of your question.

Senator WAGNER. I say, take an instance where there are 5,000 employees in a particular plant, do you think 1 individual of the 5,000 in dealing with the employer for the value of his services is on a bargaining equality with the employer?

Mr. DUNBAR. I would like to answer that question in this way.

Senator WAGNER. Just a moment, whether you think one way or the other depends on whether we understand one another. If you think he has, then I can understand the rest of your testimony.

Mr. DUNBAR. To determine whether we understand one another, I would like to ask you a question.

Senator WAGNER. Do you want to answer my question first?

Mr. DUNBAR. My answer would depend a good deal on yours. Have you been the employer of a plant that had 5,000 operators?

Senator WAGNER. No, I have not.

Mr. DUNBAR. Then I would probably have to expand considerably on my answer, because I am an employer of several hundred operators. Not only am I an employer of several hundred operators, but I have earned the opportunity to occupy that position by having coming up through the shop.

My first job was in a plant where I ran a punch press. I traveled 7 miles in the morning to my work and returned 7 miles at night, in the summertime on a bicycle. I received 8 cents an hour and worked 60 hours a week. I went from that position to another, and to another position. This is some thirty-and-odd years ago, and in all of this time I have not been out of employment one day. I think I know the employee point of view, and also think I know the employer's point of view.

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Senator WAGNER. I have been an employee; I have had that experience like yourself.

Mr. DUNBAR. Then you ought to know what I am talking about.

Senator WAGNER. Yes, I do; and that is the reason I asked this question.

Mr. DUNBAR. Now, I am not the owner of the business, but I am manager and receive a salary for my work, but I feel, as an employer with my responsibility for this division of the work, there is a duty toward the employee as well as a duty toward the management, and in my religion neither duty surmounts the other.

Any employee in our plant can come to me, to my office, sit down as he frequently does, and talk over his position, his personal affairs, his work, his case, or anything that is a part of his daily life. When that man sits down in a chair opposite my desk, he is on an equal footing with me. I put him there, and we discuss his problems as man to man.

Senator WAGNER. How many employees have you today?

Mr. DUNBAR. We employ in my division about 600 people, and my business is no different than the two hundred thirty-and-odd concerns in the machine-tool industry.

This fraternal background of which I speak is one in which the management and the skilled workers come together and in which they have a great interest in the performance of their business.

Senator WAGNER. I cannot see how this proposed legislation in any way interferes with the relationship of that kind, unless the time comes when those men working for you feel, for their own benefit, they had better organize themselves into a unit; then, if you attempt to interfere with their efforts to organize, or try to stop it or to set up an inside unit of your own, so that you may control the bargaining power, then, until that time, it never would interfere.

Then, if you should attempt to interfere with their organization, or attempted to set up an inside unit, this law would say that you cannot do that, you cannot interfere with the worker.

He has the same right to economic freedom as we say he has to political freedom, and if they choose to organize and bargain as a unit instead of individuals, you have no right to interfere with that.

However, I have not an answer from you on this question, and I will say there are many enlightened employers like you that this legislation is not intended for, and would not interfere with; but those employers who do not permit their workers to organize into an effective organization if they chose, are the ones it is intended for.

We all know all of the things that have been said about this bill, and I do not know any legislation about which there has been more false propaganda than about this bill.

There is not anything in the bill saying you must join some organization, but on the contrary it is to give the freedom to join any organization he may desire, or not to join if he does not care to. If he does desire to join an organization the employer has no right to interfere with his choice.

The real opposition here comes from the large employers who do not want any interference, and what I am trying to get from you, is this, do you think one of the 5,000 or 10,000 employees in a plant, particularly under conditions when there is great unemployment,

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may bargain for his services with an employer on an equality with the employer in bargaining with him for his services as an individual?

Mr. DUNBAR. I can't answer your question. I can imagine conditions in the plants where that individual would not be on an equality with his employer, but I am speaking for my plant, and I am speaking for the plants of the machine tool builders of this country, in which I believe they are on an equality.

If I might proceed on this point, this bill is undoubtedly very close to your heart, you probably presenting this with the same sincerity that I am opposing it. There is a need now, under 7 A of the National Recovery Act for an interpretation, and I think when you enact a bill in which you lay down the rules how both sides should play the game, it would be of a benefit.

I do not think you would like to see Yale and Harvard engage in a football duel in which the rules would say Yale could carry the ball and Harvard could not, and that the umpire might jump in any make a new rule any time he wanted to. That is an humble picture of my idea of this bill.

Senator WAGNER. This is simply a bill to protect the worker in his effort to organize. If he shall desire to organize. This bill is just to take care of him in that situation.

By the way, you may think this is a novel piece of legislation, and I notice very few employers know that there has been a declaration of this policy already in the congressional legislation. Last year we passed a bill for the railway employees which stated unfair labor practices that are enumerated here, except a little more drastically than my legislation does.

That measure has been effective for a year, and there has been no complaint from any employer except one or two that had a company-dominated union, which have been gradually eliminated.

The general effect of it, in my opinion, is that the rights of the worker are protected, because he has got rights we pretended to give him when we passed section 7 A, but with nothing to enforce those rights or to protect them, so that the worker feels that he has been deceived about it.

I do not think that you disagree that in the exercise of his rights as a free American citizen, he ought to be without protection if there is any interference with the exercise of any of those rights of freedom.

Mr. DUNBAR. In pursuing the thought in the last question I want to say that I am opposed to a bill that provides for the carrying out of collective bargaining, providing that bill states the rules by which each side shall play the game. That is a thoroughly American democratic doctrine.

Senator WAGNER. You mean there should be a provision in here that the employee shall not interfere with the employer in his efforts to organize his association?

Mr. DUNBAR. No, to put it in a very humble way, that the employee, if he does not like what is going on will not throw brickbats through the window in the plant. Or that when people are employed or engaged in building construction, that the hod carrier does not conveniently drop a hod of cement down the vent pipe on some plumber who does not happen to belong to a union.

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Senator WAGNER. You have that on the statute books today.

Mr. DUNBAR. Let us have it in here, where we understand it.

Senator WAGNER. It exists today on the statute books. I recall myself, as a judge, issuing injunctions against violations and intimidations.

Mr. DUNBAR. Those things are always difficult to prove either in court or by discussion.

Senator WAGNER. But the right exists for the employer to go into court and prevent it.

Mr. DUNBAR. But those conditions do exist, nevertheless.

Senator WAGNER. Yes, and the judicial process is already established to prevent them, so that you do not have to have it enacted in this bill.

Mr. DUNBAR. Proceeding further with my statement, I would like to say that the penalties for violations of the terms and purposes of the bill are imposed on the employer, while no penalty for violation of the terms of the bill are imposed upon the employee or organization. And the newly created National Labor Relation Board is prosecutor, judge, and jury. The terms of violation are too vague to permit fair judgment by such a board, who has the power to interpret promotion or demotion, engagement or discharge as violations of the regulations under the act.

The history of our industry does not reveal the justification for such drastic measures as this proposed bill. You cannot legislate prosperity. The same economic laws which have steered our course to prosperity in the past are working today. Give business a chance to help show the way to recovery.

The bill provides that the board at its discretion may decline to interfere or intervene in any controversy. This would permit an unfriendly labor board, should such exist, to continually stir up strife between management and employees, unless they deal with each other in the exact manner that suited the fancy of the board.

I appear before your committee, coming from a machine tool concern up in New England, employing a few hundred people. But my business and factory is representative, and the problems are the same as in all other machine tool shops throughout our country, which number some 230 concerns, employing today some 20,000 people, and at the peak of production 41,000 employees. An industry who present an annual volume of business amounting to sixty millions, and who have a notorious reputation for small profits. Throughout this entire industry the feeling amongst the employees and the employers is fairly represented by the sentiment expressed in my opposition to the Wagner labor disputes bill.

That, of course, is qualified when all other agencies have been exhausted.

The CHAIRMAN. Do you represent the other industries?

Mr. DUNBAR. The president of the National Machine Tool Association asked me to appear here.

The CHAIRMAN. So that you are really expressing the sentiment of the association?

Mr. DUNBAR. Yes, I am really expressing the sentiment of the association.

The CHAIRMAN. Mr. Dunbar, I thank you for appearing before the committee at this time.

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Senator WAGNER. May I ask just one more question. You say the president of the association asked you to come here; was it just the president's wish or was it discussed at a full meeting?

Mr. DUNBAR. It was not an action of the members of the association, but may I add, I have talked in the course of the last month with practically all of the machine tool manufacturers and builders of this country, at various regional meetings, and I have naturally talked a great deal on this subject.

I thank you, Mr. Chairman, for the privilege of appearing before you.

The CHAIRMAN. Mr. Whipp, if you will come forward we will be glad to hear you.

STATEMENT OF WENDELL E. WHIPP, REPRESENTING THE MONARCH MACHINE TOOL CO., SYDNEY, OHIO

The CHAIRMAN. Your full name is Wendell E. Whipp?

Mr. WHIPP. Yes, sir.

The CHAIRMAN. You are connected with what company?

Mr. WHIPP. The Monarch Machine Tool Co., Sydney, Ohio.

The CHAIRMAN. How many employees do you have?

Mr. WHIPP. We have about 165 at the present time.

The CHAIRMAN. What is the maximum personnel?

Mr. WHIPP. About 325.

The CHAIRMAN. It seems to me from what you state and what the last witness stated, that the industry is only running about 50 percent to 60 percent capacity.

Mr. WHIPP. That is right, just about 50 percent capacity now.

The CHAIRMAN. You want to make a statement before the committee?

Mr. WHIPP. Yes, Mr. Chairman, I would like to do so.

The CHAIRMAN. You may proceed.

Mr. WHIPP. I am appearing before your committee as a representative of the smaller type of manufacturing enterprise. The company I happen to head now employs 165 men. At the peak of production in 1929 we employed 325 men. We manufacture machine tools, which are referred to as the "basic tools of industry." Our industry as a whole dropped in 1932 in production to a point less than 8 percent of the 1926 average for the industry. We are now operating at about 50 percent of the 1926 average. The industry is still in the red but with average hourly wage rates as high and in many cases higher than the 1929 average.

My principal interest in the bill under discussion is not particularly as it may affect our relations with our own people but more particularly as it may and likely will affect our customers, who are all types and sizes of manufacturing plants throughout the country. When our customers are enjoying peaceful and harmonious labor relations they are in a better mood to buy our improved machines. In order to provide steady, profitable employment to our men, we and they are vitally interested in the elimination of labor disputes in industry and in the building up of a better feeling of real copartnership between labor, capital, and management.

Not being versed in the law I cannot comment on the legal phases nor the constitutionality of the proposed measure. But I do shudder

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at the unfairness of many of the provisions of this bill to that vast majority of employers of labor, whose labor record is clean and where relationship with labor has always been on a 50–50 basis of fair dealing and mutual good will. The provisions of this bill are all one-sided. One would think in reading section 5 of the act relating to unfair labor practice that organized labor had always been without fault in its dealings with employers and that employers were the only parties to the contract that could do wrong. Take the matter of coercion, which in itself is subject to such a wide variation of opinion as to what is and what is not coercion, is barred to the employer; while any amount of coercion can be used by his own employees, both within his plant and by outside labor or any other influence or organization. And the employer is powerless to defend or protect his interest, and in such a circumstance would be without standing on his appeal to the Labor Board proposed to be set up under this bill.

Senator WAGNER. How does this proposed legislation interfere with that relation?

Mr. WHIPP. There are many ways where it might.

Senator WAGNER. May I pursue that somewhat at this time?

Mr. WHIPP. Yes, sir.

Senator WAGNER. Do you believe that workers, if they desire to, should have the right to organize?

Mr. WHIPP. I certainly do.

Senator WAGNER. Do you feel they should have a right to organize without interference by the employers?

Mr. WHIPP. I do. They now have that right under the N. R. A.

Senator WAGNER. You think they have that right, but it has been shown in many cases that they have not been permitted to exercise that right. If you believe that, I do not know what portion of this bill you disapprove, because all that this bill does is simply to say that the workers shall be free in their efforts to organize, if they so desire to organize, for the purpose of bargaining collectively without interference by the employer, either dominating it or interfering with its administration.

Mr. WHIPP. There are a few features of this bill I do not think are quite fair to the class of employer whom I represent. I have gone over your bill, and I have made just a few little marks here, particularly in section 8, in the matter of coercion that is permitted to employees and outside labor organizations but absolutely denied to the manufacturer.

Senator WAGNER. Denied to the manufacturer?

Mr. WHIPP. Yes.

Senator WAGNER. I know that that statement is made over and over again, and certainly a lawyer cannot make it sincerely, because the employer has the right to go into court now wherever there is any effort at intimidation or acts of violence, or threatened violence, or threatened irreparable injury. The law is there today where it can be availed of and injunctions issued to restrain all of those acts. The law exists today, so far as preventing the act you speak of is concerned.

But we are dealing here only with the rights of workers to organize, and I thought from the answer you made to my question we were in accord on that proposition.

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Mr. WHIPP. I think we are, because I certainly think the workers who want to organize should be perfectly free to choose how they want to be represented, and I do touch on that further along in my brief statement.

Senator WAGNER. All right; that is all I desired to ask you.

Mr. WHIPP. I continue. The record shows that most labor disturbances during the past couple of years have been in plants in which a very small minority of the workers attemped through coercion to enforce their will not only on their employers but on their fellow workmen as well. Frequently this pressure has all been initiated and promoted from without and has taken the worst form of coercion. The bill makes no provision for the protection of an employee against coercion or intimidation by outside labor representatives or fellow employees to join a labor organization, to go on strike, or take other similar action against his will. Extension of this power of coercion as granted under this proposed act will without doubt be resented by many workmen in plants and would induce more conflict, less production, higher costs, less orders, less employment. and tend to lower our standard of living.

The feeling of antagonism between employer and employee that formerly existed in this country has lessened to a most noticeable extent in recent years and especially so during this depression. A genuine feeling of community of interest between employer and employee exists today as never before in this country. Employees are keenly interested in the success of the plant in which they work.

They know that a prosperous, successful plant can and usually does pay higher wages, provide more continuous employment, and give better working conditions than the less prosperous employer. The good employers—and there are more of us good than bad—know that our businesses are never prosperous unless labor is fully employed and highly paid. It seems highly essential that present relations between the good employer and his employees should not be thrown out of balance but should be surrounded by conditions that would encourage mutual understanding and respect to grow.

The very title of this bill, The Labor Disputes Bill, together with most of its provisions, would seem to endanger the growth of this mutual understanding and, in fact, be an entering wedge that would likely widen the present narrow gap between employer and employee.

Senator WAGNER. You say this relationship is going to be disturbed, and I would like to know how.

Mr. WHIPP. I just wish you might know the conditions, the relationship that exists in many small plants, and let us keep in mind there are more plants represented by our type in this country than there are those employing from 10,000 to 15,000 people.

Senator WAGNER. What I am asking is, what is there in this bill that interferes with this relationship?

Mr. WHIPP. I am just getting to that fact. I can well imagine in a group of workers such as we have today, numbering 165, there may be one or two agitators, because going back to Biblical times, when 12 men were gotten together, 1 of them was a Judas; and it is quite likely that in any organization, no matter how close the relationship may be between employers and employees, there may be one or two men easily led who might listen to an outside labor

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organizer, who will say: "Now, I will tell you how we can do this job; here is the kind of complaint we can register against your company; and we can get this thing organized and we will turn this complaint over to the Labor Relations Board." Then they can get the headlines on the front pages of the paper of the agitation, and the agitation spreads to the employees in the shops; the men may being to talk, and then a conflict commences. That is what we want to avoid.

Senator WAGNER. If those workers are not in sympathy with those efforts to organize, all you do is to have your election and determine whether or not they want an organization, or whether they want any representatives, or whether they want collective bargaining; and if your workers say "no" that is the end of it; and then you have a finding by a governmental agency that they do not desire to have an organization, or that they want a certain type of representation. With that, you have an official sanction of that, and the trouble is over.

Do you think that we, in America, can prevent men from talking to one another?

Mr. WHIPP. Of course, you do not want to do that.

Senator WAGNER. Yes; but some judges think that. I was down in Pennsylvania about 5 years ago during the coal strike which was a very serious thing, and there a judge issued an injunction preventing the striking workers from talking or singing religious hymns, and also attempted to restrain the members of a labor organization from feeding these men.

That did not sound like an American edict to me, so we cannot go to the extent of preventing men from talking to others about the kind of organization they desire, because that would be interfering with the freedom of speech.

There is nothing in this proposed legislation that disturbs your relation in the slightest, with your employees, if you say when they desire to organize they should have the right to organize.

Mr. WHIPP. Yes; but we do not like to see outside unions come in to disturb our present very agreeable relations with our workers.

Senator WAGNER. They can do that now, they can talk to your workers now.

Mr. WHIPP. Yes; it it true they can, but there is no labor board such as this sets up.

Senator WAGNER. You will have the protection of having a governmental agency determine the questions for you as to whether the workers really want to organize.

Mr. WHIPP. Of course if we were sure under your bill that the caliber of men always sitting on the Labor Board would be men of your high caliber, it would be a different question.

Senator WAGNER. You have got to rely on the President of the United States that he will put men on there of high character, and there are certainly three men of high character on there now. Mr. Biddle is one of the most eminent lawyers of the country. Everyone knows Mr. Millis, connected with the Chicago University, and I think the chairman of this committee will vouch for Mr. Smith on that Board, who is from Massachusetts.

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Mr. WHIPP. And further, of course, under the provisions of the bill the Board may have a political nature, a political character that might be changed from one administration to the other.

Senator WAGNER. No; it cannot, because we are making fixed terms for the individuals, and for the very purpose of keeping it out of any political influence. That is the reason I am advocating an independent board, because I want to make it as just a judicial body as possible, to be free from political influence.

Mr. WHIPP. If it could be a board built up to the standard of our wonderful Supreme Court in this country. I think industry would welcome it.

Senator WAGNER. You have other boards, the Federal Trade Commission, and others, and nobody can suggest that political influence can be used in any of those boards in any way. Those men are conscientious men, and they want to perform their duty for the welfare of the public. But of course our trouble, and that goes to you and to me, is that when one of the boards decides against us, we do not think as much of them as we did when they decided with us.

I was a judge, you know, and I know that when I decided a case in favor of one attorney's plan, I was a great judge, but the other fellow did not think the same way.

I think that is an apprehension that would go against our whole structure of government. If we cannot trust the men that we put in public office to administer our public welfare, then the whole structure will crumble.

Mr. WHIPP. Of course in all likelihood a lot of grievances that might be started in the effort to unionize industry, might come before one of the smaller subsidiary boards to be set up under the bill, and they would not be of the high caliber as the men with respect to whom you spoke.

Senator WAGNER. That may be quite true, but I think unless we can trust those we have to administer our public welfare, the whole structure will, of course, crumble.

Mr. WHIPP. Contractual relations must be fair to both parties to the contract if peace and progress are to result. The whole tenor of this bill is manifestly unfair to both the good employer and to the worker who wants to be free to deal directly with his employer or to have a free hand in choosing his own representative to speak for him. The "majority rule" and the "closed shop" provisions of this bill take the free right of choice from the workers and impose an intolerable condition on the good employer.

It would seem that in most labor disturbances in the past couple of years the main point at issue has been, Who shall speak for labor? There are in this country about 22 millions of people gainfully employed, not including farmers, servants, professional people, or individuals in business for themselves.

The National Industrial Recovery Act, which I should like to see extended for another year in substantially its present form, gives each worker his constitutional right to speak for himself, or to choose freely a representative to speak for him. It gives him the freedom of choice as to whether he shall or shall not join a labor union.

These rights are set forth in section 7–A of the N. I. R. A. From the wording of the law, it would seem clear that each worker is

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guaranteed the right to decide for himself who will speak for him, and this right has on more than one occasion been reaffirmed by the President. The Wagner bill proposes to take this right of free choice away from him.

As we read our daily papers, we frequently read headlines such as "Labor demands 30-hour week", "Labor at odds with the President on Automobile Code", or "Labor favors unemployment insurance." All of this leads us to ask, Who is labor? Who attempts to speak for the 22,000,000 workers in this country?

In attempting to answer this question, let us consider the make-up of this army of 22,000,000 gainfully employed persons referred to above. Of this 22,000,000, according to the official report made in August 1934, 2,823,750 are members of the American Federation of Labor. Before Congress and the President and the employers of this country, the A. F. of L. claims to speak for labor, although its membership constitutes only 12.8 percent of America's workers.

In spite of the invitation of the National Recovery Act to workers to organize, there seems to be relatively little disposition on the part of the vast majority of American workers to affiliate themselves with the A. F. of L., if we are to judge by the fact that such a small proportion are members after approximately 50 years of existence.

The present National Industrial Recovery Act can be amended and extended to provide fairness to both employers and employees and to include a National Labor Relations Board with reasonable powers to function under the present Department of Labor where it belongs.

I feel that it should be the policy of the Government to protect men in their right to work, and to refrain from any policies which tend to force men into labor organizations.

The Wagner labor bill is too dangerous to industrial progress in this country and should not be favorably reported from this committee.

The CHAIRMAN. Mr. Ellard, will you please come forward, and the committee will be glad to hear you.

STATEMENT OF HARVEY G. ELLARD, REPRESENTING THE INSTITUTE OF AMERICAN MEAT PACKERS, CHICAGO, ILL.

The CHAIRMAN. Mr. Ellard, your full name is Harvey G. Ellard?

Mr. ELLARD. Yes, sir.

The CHAIRMAN. Your residence is in Chicago, Ill.?

Mr. ELLARD. Yes, sir.

The CHAIRMAN. In what capacity do you appear before this committee?

Mr. ELLARD. As the representative of the Institute of American Meat Packers.

The CHAIRMAN. What is your occupation?

Mr. ELLARD. I am employed by Armour & Co. as director of personnel.

The CHAIRMAN. You are appearing in a representative capacity for Armour & Co. and others?

Mr. ELLARD. I am appearing before you in behalf of the Institute of American Meat Packers.

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The CHAIRMAN. How many members are there in that organization?

Mr. ELLARD. Approximately 300, being about 85 percent of the meat-packing industry, and employing some 200,000 employees.

The CHAIRMAN. Are the employees in those meat-packing industries organized?

Mr. ELLARD. No, sir; not in trade unions. But they are organized in a general collective way through plans of employee representation, and have been so since 1921.

The CHAIRMAN. You may proceed with your statement.

Mr. ELLARD. I am appearing before this committee on behalf of the Institute of American Meat Packers, an organization composed of some 300 meat-packing companies operating throughout the United States, and representing over 85 percent of the business of the meat-packing industry. Normally the industry employs approximately 200,000 people. Cooperating with me is a committee from the industry composed of the following persons:

Mr. F. L. Badgley, Swift & Co.; Mr. James B. Rooney, Wilson & Co.; Mr. Thomas Creigh, Cudahy Packing Co.; Mr. Ewing Sinclair, Kingam & Co.; and Mr. A. D. Donnell, Rath Packing Co.

The Institute of American Meat Packers has authorized this committee to appear before you and present the views of the industry with regard to Senate bill 1958. In order to save the time of your commitee and to avoid unnecessary repetition, I have been asked to act as spokesman and make one presentation instead of having each member of our committee address you.

In order that the attitude of the meat-packing industry be not misunderstood, I desire to say at the outset that it is not opposed to the principle which seeks to guarantee employees a free choice in the selection of their representatives for collective bargaining. The bill under discussion, S. 1958, however, goes much farther than this, and is decidedly objectionable to the industry I represent.

1. THE SO-CALLED "COMPANY UNIONS"

Employee representation plans have been the subject of so much public and private discussion since the enactment of section 7–A of the N. I. R. A. that the effect of S. 1958 on such plans will be considered first.

Paragraph (2) of section 8 makes it unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. While the bill does not in terms prohibit employee representation plans or so-called "company unions", the effect of the provision mentioned is an indirect prohibition. Literally, it would prevent an employer from furnishing a room or other place on his premises where the employees might meet, or from permitting such employees to meet during working hours without loss of time and pay.

The term "company union" is not a proper name for the plans of employee representation in the meat-packing industry. It is a term which has been loosely applied to them by persons whose interests run counter to the success of employee representation plans. Pro-

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ponents of this bill define the term "company union" to mean a union of employees within a company, initiated by the company, controlled and dominated by the company, and imposed upon the employees without their being given an opportunity to accept or reject. If that is a true definition of the term, we say that there is absolutely no similarity between this type of organization and the plans of employee representation that exist in the packing industry.

Notwithstanding statements to the contrary, I should like to make clear that employees of those companies having conference boards or assemblies do consider and pass upon questions of hours, wages, and working conditions in their conference boards or assemblies. Naturally, since such matters are usually disposed of for comparatively long terms, they do not come up for discussion at every meeting of the conference board or assembly. On the other hand, they, like many other matters, may come up for discussion at any time, according to the wishes of the employees or management.

In addition, many other matters, such as vacations, group health and life insurance, mutual benefit associations, pensions, retirements, thrift and savings plans, credit union, and health and safety are constantly being taken up. The questions brought up and ironed out in the conference board meetings are very numerous. As every employer of labor knows, it is frequently the little things which create friction in the ranks of employees. Representatives of the employers, sitting around the conference table with representatives of the employees who actually work in the plant and are familiar with the cause of the complaint are in a much better position to devise a plan to correct such matters than anyone else.

These matters, along with wages and hours, all of which are of mutual interest to both employer and employee, are constantly arising in every plant and factory. These conference boards provide a means for satisfactorily ironing out the differences of opinion which cause them. It, therefore, seems most unreasonable to by statute prohibit an employer from furnishing his employees a place to meet or to prohibit them to meet during working hours without loss of time or pay when the purpose of such meetings is for the mutual benefit of employee and employer.

The employee representation plans in the meat-packing industry were not brought about by the N. R. A. They were not hastily conceived to counteract the aggressive action of trade unions following the passage of the N. I. R. A. Employee representation plans have existed in the meat-packing industry rather generally since 1921. These plans have not been company controlled, nor company dominated, as charged by the proponents of this bill, and during the past 14 years have served as successful mediums for collective bargaining and for cooperative relationships between the workers and management in this great industry.

These plans empower the conference boards or assemblies to negotiate matters affecting wages and hours of labor, and the fact that the meat-packing industry has been singularly free from labor disputes and labor difficulties during the past 14 years proves that such plans have served effectively in preserving harmonious relations between the workers and management. During this period wages in the industry have been both raised and lowered, and hours

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and conditions of employment have been adjusted to meet changing conditions. These changes have all been made through the medium of employee representation.

The CHAIRMAN. Do you later discuss what financial aid, if any, the packers give these organizations of employees?

Mr. ELLARD. I can answer that now. They pay the time of the men so employed; they furnish them a room in which to meet; they furnish secretarial help in the taking and transcribing of minutes of the meeting.

Senator WAGNER. Are you going to discuss the constitution?

Mr. ELLARD. I have not prepared to, but I would be glad to take that up now, if you wish.

Senator WAGNER. I was only going to ask one or two questions. You are familiar with their constitution?

Mr. ELLARD. Quite.

Senator WAGNER. I thought so. Do you limit representation to employees?

Mr. ELLARD. Yes; within the company.

Senator WAGNER. Thank you, that is all.

Mr. ELLARD. Except for a short time during the war period, when commodity prices were much greater than now, the hourly wage rates paid employees in this industry are now higher than ever before. These high hourly wages are reflected in average weekly earnings which the United States Bureau of Labor Statistics reports are now larger than the average of all manufacturing industries and were larger during the depression period. Employees have obtained these benefits without drain on their income because of dues or assessments for the operation of the representation plans. In view of the splendid record of industrial peace enjoyed by the meat-packing industry, it would regret the statutory abolition of the agency which has been responsible for this peace, particularly at the present time when a healthy recovery from the depression is so dependent upon the uninterrupted employment of workers. It feels that special consideration should be given to the fact that, over a long period of years, the principle of collective bargaining has been successfully worked out through employee representation plans, rather than that such plans should be, in effect, outlawed.

A somewhat similar bill to the one under discussion was made the subject of a report of the Senate Committee on Education and Labor of the Seventy-third Congress. In that report the committee stated that it had considered with great care a proposed unfair labor practice which prohibited an employer from initiating, participating in, supervising, or influencing the formation, constituton, bylaws, other governing rules, operations, policies, or elections of any labor organization.

The committee also considered the evidence presented, tending to show how employers had dominated labor organizations of their own employees. The committee stated that—

> these abuses did not seem so general that the Government should forbid employers to indulge in the normal relations and innocent communications which are part of all friendly relations between employer and employee; * * * that the object of the third unfair labor practice was to remove from the industrial scene unfair pressure, not fair discussion, * * * that the com-

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mittee was not persuaded that in all cases an employer should be forbidden to pay the representatives of employees their regular wages if they confer together or with employers during working hours.

2. SELECTION OF REPRESENTATIVES

The meat-packing industry has no desire to register a protest against the principle which seeks to guarantee the free choice of employees in the selection of their representatives for collective bargaining. It feels, however, that the choice should be wholly free, without coercion from any source. Employees can be interfered with and coerced by outsiders just as well as by employers.

Employees in the meat-packing industry are not coerced or influenced in their selection of representatives under the employee representation plans. The interest of employees in these plans is manifested by the fact that a very large percentage of them cast their votes at the regular elections. Information collected by the Institute of American Meat Packers shows that the percentage of employees voting for representatives at elections held under such plans averages above 90 percent in the plants included in the reports.

They appoint their own tellers, watchers, and judges of election. They set up places of voting where an employee marks his own ballot in secret. They count and tabulate the votes and declare the names of those elected. The management has absolutely no voice whatever in the selection of these representatives, and the question of whether an employee votes or not is also a matter of free choice with him. Judge Nields found the same thing to be true in the celebrated *Weirton Steel Co. case*, and this situation prevails in every industry where employee representation plans, with which I am familiar, are in force. Certainly it is the case in the meat-packing industry.

Under our plans of employee representation, the employees have the right and the privilege of meeting privately, apart from management representatives, forming their own opinions, and fixing their own policies.

I feel that right to meet privately and separately would, under section 8, paragraph 2, of the proposed bill, be prohibited, because it would prohibit the management from paying them while they were meeting together.

They are not denied the right and the privilege of employment of consultants or advisers and are not dominated or controlled in the way which the proponents of this legislation would have the committee believe.

The avowed purpose of this bill, as stated by its proponents, is to destroy these employee representation plans. Before a law is enacted which will eliminate so valuable an agency as employee representation and one which has had such general acceptance among the workers in the packing industry, it should be given the most thoughtful consideration.

Senator WAGNER. What do you base that upon, because we limit the financing of these plans?

Mr. ELLARD. No; I base it on a number of things, a number of general observations. I heard a most elegant speech by you reported in the news wires in which you said you were going to get

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rid of these fake unions, with direct reference to plans of employee representation.

Senator WAGNER. I did not, I do not think, use the word "fake."

Mr. ELLARD. That is the way I heard it.

Senator WAGNER. Company-dominated, was it not?

Mr. ELLARD. The word "fake" sticks in my mind. That is the way I remember it.

Senator WAGNER. You are not in favor of a fake union, are you?

Mr. ELLARD. No.

Senator WAGNER. That is all I said I was going to get rid of, fake unions.

Mr. ELLARD. The difficulty is the association of that term with the plans of employee representation, and that has been done by so many other people who have been back of this type of legislation, that the association is there in the mind of many of us.

Senator WAGNER. What do you mean by this type of legislation? This is new, except for the Railway Labor Act of last year.

Mr. ELLARD. Yes; but this is the third attempt to pass this sort of bill.

Senator WAGNER. You know the Railway Employees Act was passed by the unanimous vote of both Houses of Congress last year, applying to all railway employees.

Mr. ELLARD. I realize that, and all railway employees are unionized in a national union.

Senator WAGNER. There are some employee plans which have been established, though they are not in any way dominated by the employer, and they exist now.

Mr. ELLARD. I am interested to hear that. I had the rather definite impression that there were types of employee representation which ran collateral with these national unions in certain railroads, but that all railroad employees were organized in national unions.

Senator WAGNER. I think you are mistaken as to that. There are some that were company unions, I have been told by one of the mediators, that have transformed themselves into a union not financed by the railway company, and they have legitimatized themselves to that extent.

Mr. ELLARD. I wanted to talk to you first a little bit further. The reason why I have the feeling, and my group have the feeling, that this legislation is aimed to kill employee-representation plans is based on a recent article or I might say the answer grows out of a recent article in this month's American Magazine, being an interview of William Green, of the American Federation of Labor, where he was asked what he would do where the employees voted for a plan of employee representation. Mr. Green said he would have to accept that temporarily until he could get a proper educational influence upon those employees to convince them they were wrong.

A further matter that bears on my opinion is that the gentlemen who are now the members of the National Labor Board, and its chairman, have been testifying before your committee and have indicated clearly they believe the only basis of collective bargaining is through the national union.

That is my answer to the question why I feel that the avowed purpose of this legislation is to outlaw and get rid of employee-representation plans.

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Senator WAGNER. Many of the employee-representation plans I believe you will admit are dominated by the employer.

Mr. ELLARD. I have yet to see one that was successful at all where there was any domination by the employer. The employees soon sense that fact and it is withdrawn.

I was greatly interested in reading the testimony of Mr. Garrison and the questions by Senator La Follette, which indicate the form of thinking of those men on this bill, and they being proponents of this bill lead us to oppose it vigorously because that is the type of economic freedom that would be imposed upon us, if that is the philosophy back of this bill.

The bill, as drawn, seems to be founded on the philosophy that the interests of the employees and management are hostile and diverse. This is not the fact, and should not be the theory of any legislation. The interests of employers and employees are mutual, and legislation should be framed with the idea of promoting that mutuality of interest, rather than destroying it.

It seems to us that the general provisions of the bill are inconsistent with the declaration of policy in section 1, i. e., that equality of bargaining power between employers and employees is not attained when the organization of employers in the corporate and other forms of ownership association is not balanced by the free exercise by employees of the right to bargain collectively, through representatives of their own choosing. For instance, paragraph (a) of section 9 provides that representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. There cannot be free choice of representatives when representatives selected by a majority are the exclusive representatives of the minority. The proviso to this paragraph permitting any individual employee or group of employees to present grievances to their employer through representatives of their own choosing is not sufficient to overcome the effect of the exclusive agency given to the representatives of the majority with respect to wages, hours of employment, or other conditions of employment.

Senator WAGNER. May I ask a question there?

Mr. ELLARD. Certainly.

Senator WAGNER. Have you a written collective-bargaining agreement with your employees?

Mr. ELLARD. There is no written collective bargaining agreement. The minutes of these meetings became the basis of agreement.

Senator WAGNER. I understand that, but you have no written agreement which guarantees to workers certain wages, certain hours of employment, and other conditions of employment, the kind of collective bargaining agreement that is usually made with outside organizations—you know the type I mean.

Mr. ELLARD. Yes.

Senator WAGNER. You have no such contract?

Mr. ELLARD. No; we have no such contract. The agreement is between the management and workers, and becomes an agreement until it is changed.

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Senator WAGNER. Your rate of wages may be modified at any time by the management?

Mr. ELLARD. No, sir; only by agreement with the employees. There is no set period. It might be changed from month to month, and frequently in the last year we have made changes, in fact three changes upward in wages.

Senator WAGNER. Do these representatives speak for all of the employees in your dealings?

Mr. ELLARD. Yes, sir.

Senator WAGNER. And they are elected by a majority?

Mr. ELLARD. Yes; in the precinct in which they serve. However, the minority still has a perfect right to appear and present their side of every case if they so desire, or they may select an outside organization to represent them if they wish, and there has been dealing with that sort of organization.

Senator WAGNER. Of course that is dividing the force?

Mr. ELLARD. That is right.

The CHAIRMAN. There are some groups of employees who prefer not to have a written contract for wages, wanting to hold themselves in position to take the higher wages without any contract at any time.

Mr. ELLARD. It seems so. We have one contract with an outside organization, our relationship with that group having been very pleasant, that it made from year to year. Those employees under that contract suffered by having a contract through the entire year when wages in the rest of the plant were adjusted for other employees in the representation plan.

Moreover, except possibly in a factory which was wholly union or wholly nonunion, there would be a constant controversy over the question of whether or not one group or the other represented the majority. Practically all of the labor troubles during the past 2 years have been in connection with this question of majority representation.

No such question can possibly arise under any of the plans of employee representation with which I am familiar because they do not undertake to make the representatives selected under such plans the exclusive bargaining agents for the employee.

3. UNFAIR LABOR PRACTICES

Section 8 of the bill lists four unfair labor practices. It will be noted that these so-called "unfair labor practices" all relate to acts by the employer. In other words, unfair labor practices can only result from acts of the employer. Unquestionably, employment creates mutual obligations and liabilities, and it seems very strange indeed that only one party of such relationship can be guilty of an unfair practice arising out of that relationship. Paragraph (9) of section 2 makes a labor dispute include any controversy, regardless of whether the disputants stand in the proximate relationship of employer and employee. Yet this bill provides no restraint upon third parties who disturb the employer and employee relationship, although such third parties have it within their power to create the labor dispute and bring about the very things for which an employer may be condemned under this bill.

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In section 2, paragraph (3), it is stated that the term "employee" shall include

any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment * * *.

This is something new and novel in legislation. It has always been the law, so far as I know, that when a person leaves the employment of another, his employment terminates. It would certainly be contrary to general principles to say that employment continues when the employee volutarily throws down his tools, walks out of the factory where he is employed, and refuses to do any further work or be subject to the control or directions of the employer.

Senator WAGNER. There is a very high authority that a striker is still an employee?

Mr. ELLARD. Yes, I so understand.

Senator WAGNER. I mean legal authority.

Mr. ELLARD. That is right, but this goes further and says a person who is away from his employment by reason of any unfair labor practice maintains his status as an employee, and that is the difference I see in this proposition.

In that connection, what is the status of an employee, do you mean an employee for the purpose of this job, or do you mean an employee with all of the implications and responsibilities that go with an employee.

We are opening up a wide field of implications when we say an employee retains that status when he is away from his work.

The CHAIRMAN. I think it is meant to include an employee who is discharged for being a member of a union that his employer does not approve of.

Mr. ELLARD. I do not understand that.

The CHAIRMAN. I think the difference is meant to include such a workman as an employee who is discharged for being a member of a union that his employer does not approve of.

Mr. ELLARD. It might mean any person who feels he has been discriminated against in any way.

The CHAIRMAN. Yes; who is discharged for improper conduct or for waste or for malicious interference with the process of the business.

Mr. ELLARD. For any reason he alleges is an unfair labor practice.

Senator WAGNER. The unfair labor practices are enumerated, and if he leaves because these practices have been indulged in, he is justified, isn't he—I mean, he has a right to establish that fact, and if he cannot establish the fact, he ceases to be an employee because he left without justification.

Mr. ELLARD. During the time that fact is being established this bill holds him in the status of an employee, and what does that mean? It means that the employer is liable to him for workman's compensation, and there are several of these things we cannot understand.

Senator WAGNER. These things are established for themselves.

Mr. ELLARD. Still the language is broad enough to do that.

The section mentioned is not limited to those whose work has ceased as a consequence of current labor dispute but include those

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whose work has ceased "because of any unfair labor practice." It is the easiest thing in the world for employees who are laid off or discharged to charge unfair labor practices. Paragraph (3) of section 8 makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." The statute, therefore, furnishes a basis for many and varied claims of unfair labor practices. The business of the packing industry, in particular, is subject to fluctuations in employment, due to the seasonal character of the business, and the weekly, and even daily, fluctuations in the receipts of livestock, which furnish the raw material for the industry. Employes who are thus laid off as a result of necessary reductions in forces may be prone to feel that they have been discriminated against in favor of those who are retained in the employment. I certainly do not think Congress should encourage such claims by providing that employees whose services are terminated, either voluntarily or involuntarily, shall retain their status as employees because of the existence of some labor dispute or because of some alleged unfair labor practice.

It should be borne in mind that under paragraph (9) of section 2 the term "labor dispute" includes any controversy, regardless of whether the disputants stand in the proximate relation of employer and employee. A labor dispute can thus be created under the provisions of this bill by an outsider, although actually no controversy whatsoever exists between the employer and his employees. I repeat again that the unfair labor practices condemned by this bill can only grow out of acts by the employer. There is no restraint whatsoever on those who may be instrumental and chiefly interested in creating a labor dispute.

The meat-packing industry is strongly opposed to any legislation which does not make the unfair labor practices condemned by the law applicable to everyone.

4. THE LABOR BOARD AS A FORUM FOR DISPUTES

It is clear from this bill that the National Labor Relations Board is to be an inquisitorial and quasijudicial body. It is given power by section 10 to prevent any person listed in section 8 from engaging in any unfair labor practice affecting commerce, and it is provided that this power shall be exclusive. It may, as the result of charges filed with it or on its own motion, serve complaints on employers believed to have been guilty of unfair labor practices, subpena witnesses and records, and conduct hearings. It is provided that in such proceedings the rules of evidence prevailing in courts of law or equity shall not be controlling and that the findings of the Board as to facts, if supported by evidence, shall be conclusive. It has no power to act as an arbitrator in labor disputes unless the parties to the dispute agree to submit such dispute to the arbitration of the board, or its appointees.

Senator WAGNER. Do you think they should have the power of compulsory arbitration?

Mr. ELLARD. There is no arbitration effective, if it is compulsory, but a board of this sort, which is the prosecuting agency of the

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employees cannot be looked upon with favor by the employer in submitting a dispute to it.

Considering the facts that, under the provisions of this bill, unfair labor practices can only grow out of acts of the employer, a board so constituted and empowered cannot be a popular and welcome forum to employers for the adjustment of labor disputes. Its findings will bind the employer only. Cease and desist orders can be entered against the employer only. Vindication of the employer in a particular case means little or nothing, because another complaint, based on some unfair labor practice, can be immediately filed. In plain language, the principal achievement of this bill, if passed, will be to provide a legal means whereby trade-union leaders can harass and annoy employers and employees more than ever before in their efforts to bring about closed-shop contracts with their union. The Board cannot have the support and confidence of employers, because in the last analysis it will exist only as an agency for the prosecution of employers. No agency can be effective unless it enjoys the full confidence of all concerned and is basically designed to equally protect all parties.

5. GENERAL

In conclusion, I wish to again point out that the whole plan of this proposed legislation is opposed to the basic philosophy of partnership and cooperation between employers and employees. It is bottomed on the the theory that dealings between employers and employees are necessarily hostile and adverse. It seeks to give organization of employees greater rights and privileges than they have heretofore possessed by declaring certain labor practices of employers unfair and unlawful. These greater privileges of employees and their organization are without the assumption of any responsibilities or liabilities.

On this question of balancing of power, Judge Nields, in his decision in the Weirton Steel Co. case, said:

> The theory of balancing of power, or of balancing opposing power, is based upon the assumption of an inevitable and necessary diversity of interest. This is a traditional Old World theory. It is not the twentieth century American theory of that relation as dependent upon mutual interest, understanding and good-will.

This language is very appropriate to the point I am making. Prosperity in business is just as essential to employees as it is to employers. Employers cannot employ large numbers of people and pay high wages without prosperity. Labor disputes and controversies prevent prosperity in business, and I submit that Congress should not enact legislation which will give an impetus to labor disputes and controversies, as this bill, if passed, most certainly will do.

Senator WAGNER. Do you remember the Norris-LaGuardia injunction bill?

Mr. ELLARD. Yes, sir.

Senator WAGNER. Did you appear for or against that act?

Mr. ELLARD. No, sir.

Senator WAGNER. Did your organization have any interest in that particular act?

Mr. ELLARD. Not that I recall, I do not believe we made any presentation of any kind in connection with that act.

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Senator WAGNER. Did you favor it?

Mr. ELLARD. No, sir.

Senator WAGNER. My recollection is you opposed it as an organization.

Mr. ELLARD. If we did, I am not familiar with that fact.

Senator WAGNER. Were you opposed to it individually?

Mr. ELLARD. Yes; because I felt it withdrew certain protections from employers that they were entitled to.

The CHAIRMAN. Is there anything further?

Mr. ELLARD. No, Mr. Chairman; that is all I have to say.

The CHAIRMAN. If Mr. Deffenbaugh is present, will he please come forward.

STATEMENT OF JAMES W. DEFFENBAUGH, REPRESENTING THE HOCKING GLASS CO., LANCASTER, OHIO

The CHAIRMAN. Your full name is James W. Deffenbaugh?

Mr. DEFFENBAUGH. Yes, sir.

The CHAIRMAN. You are an attorney at law residing in Lancaster, Ohio?

Mr. DEFFENBAUGH. Yes, sir.

The CHAIRMAN. You are appearing here in behalf of the Hocking Glass Co.?

Mr. DEFFENBAUGH. Yes, sir; that is right.

The CHAIRMAN. How many employees are there in that company?

Mr. DEFFENBAUGH. In Lancaster proper, 2,214 employees.

The CHAIRMAN. In one plant, or in a series of plants?

Mr. DEFFENBAUGH. In one plant, and then the Hocking Glass Co. owns all of the Lancaster Glass Co. which has 583 employees. There are two plants in Lancaster, Ohio, employing 2,797 employees at this time.

The CHAIRMAN. Is there an organization of the employees?

Mr. DEFFENBAUGH. Pardon me, I should say that the Hocking Glass Co. owns one-half of the stock of the General Glass Co. of Winchester, Ind., and it employs 636 people; and it also owns a controlling interest in the Standard Glass Co. that employs 178 people altogether. Altogether, the Hocking Glass Co. in its offices in Lancaster, Ohio, account for 2,975 employees.

The CHAIRMAN. Are there organizations of employees for the purpose of collective bargaining in these plants?

Mr. DEFFENBAUGH. There is not.

The CHAIRMAN. Your employees are not organized?

Mr. DEFFENBAUGH. They are not.

The CHAIRMAN. Do you desire to submit a statement to the committee?

Mr. DEFFENBAUGH. The only statement I can make is oral, and I will try to make such a statement.

The CHAIRMAN. You may proceed.

Mr. DEFFENBAUGH. The Hocking Glass Co. is opposed to Senate bill 1958 for the following reasons:

The CHAIRMAN. If I may interrupt there, there is nothing in this bill, of course, that would change the situation in your plant, no specific language in the bill that would require these employees to form a union.

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Mr. DEFFENBAUGH. That is true, Senator, but if this bill passes the Hocking Glass Co. is sure that the American Federation of Labor will come into our plants as it did in 1933, and undertake to organize our plants with an attitude of opposition to the company.

We feel that the bill, in section 2, clause 2, should not specifically exempt labor organizations or unions, or anyone acting in the capacity of an officer or agent of such a labor organization from the definition of "person."

We feel the bill seeks to set off manufacturers and employers generally of labor from agricultural employers, thus creating a class or classes among the citizens of the United States.

We are especially opposed to the latter part of section 2, clause 9, wherein this language occurs:

> Regardless of whether the disputants stand in the proximate relation of employer and employee.

We do not believe anybody should have any rights to complain against an employer unless he is an employee of the company and directly interested.

We believe that in section 6, clause A, we have lost something that appears in 1934 law, when we leave out the word "reasonable" preceding "rules and regulations", in giving the labor board authority to adopt rules and regulations, and does not require the word "reasonable" as the first bill did.

We believe section 8, the very first sentence, is unfair to employers, because it puts restrictions in clauses 1, 2, 3, and 4 of section 8 on employers, and leaves other people free to interfere, to restrain and coerce employees.

We believe that the prohibition against interference, restraint, and coercion should be not only upon employers, but upon any person or persons, or any organization or organizations, and, of course, I would expect that to include labor organizations.

Senator WAGNER. Have you had occasion to make application to the court for injunctions restraining threats, intimidations, violence, and these other things usually enumerated?

Mr. DEFFENBAUGH. We do not, but we have had plenty of exhibition of intimidation and threat in the Hocking Glass Co.

Senator WAGNER. You know the right exists to secure injunctions against those practices?

Mr. DEFFENBAUGH. It is pretty hard to do, but we had a better remedy. We followed these local men who were representing the American Federation of Labor and told them if there were any further threats, intimidations, or trying to compel people to join against their will, the men would be discharged who made those statements, and that was the end of it. I would say that was better than anv injunction.

Senator WAGNER. Is that not one of the reasons that some of the employers at least are anxious to have a system by which only an employee can represent the workers in collective bargaining, because he has that very advantage you speak of, if the employee makes a demand that the employer does not like, the employee is told if you persist you will lose your job, and it is an economic advantage I am very glad to hear you recognize as existing, because it is denied in so many instances.

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Mr. DEFFENBAUGH. We do not deny it, but there is no man that works for our company but what can quit any day, and as long as we do not discharge him for his labor activities we could discharge him any day.

But, in the 30 years the Hocking Glass Co. has grown from a small plant, and it has grown tremendously since 1927, and has been growing during the last year, in the number of employees, and in the sum of more than a million dollars in wages that it pays, as yet we have had no trouble in adjusting any differences between the employee and the employer.

Senator WAGNER. If the relationship is as you state there is nothing in this legislation which will disturb that relation.

Mr. DEFFENBAUGH. We believe it does, from the fact that our experience in 1933 was that the American Federation of Labor came in there through some of its allied organizations and tried to intimidate our employees in their work.

The CHAIRMAN. Do I understand you to say that when that was done you called some of the employees in who had been doing that, and said you would discharge them if they continued to do so, and did not cease?

Mr. DEFFENBAUGH. We said we would discharge them if they made any further misstatements or misrepresentations, or any attempts at intimidation.

The CHAIRMAN. Under this bill you would not be allowed to do that.

Mr. DEFFENBAUGH. I believe that is right, we would not have a right to do that, and therefore we would have a lot of trouble.

Senator WAGNER. There is a remedy today if there is intimidation, you can get your injunction today against that sort of thing.

Mr. DEFFENBAUGH. It is a hard remedy to put into operation.

Senator Wagner. If it were put into this bill it would just be a repetition of a right that already exists, namely an injunction to prevent these practices you complain of, such as intimidation, threats of violence and so on.

Mr. DEFFENBAUGH. Why not put it in section 8 so that the same rule applies to the employee will apply to the employer, and will apply to any other person?

Senator WAGNER. You have that remedy now, and you have the additional remedy which you just admitted, of the economic pressure you can exercise against the employee today, by threatening him with the loss of his job if things are not done according to your wishes.

Mr. DEFFENBAUGH. No, do not understand me to say according to our wishes. There are a lot of things done not according to our wishes, but when they did things we believed were dishonest and in which we believe the court would uphold us, then we thought we had the right to put some pressure on them.

Senator WAGNER. From what you say, I think I can see a chance of one of your employees representing the rest and seeking something you would resent, that his job would not last very long, it seems to me, if it was something you resented.

Mr. DEFFENBAUGH. That may seem so to you, but I believe you are wrong. We treat them with great consideration that way.

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Going further now, we are opposed to the closed-shop provision in section 3, clause 3 of section 7, and we are opposed to the word "encourage", in clause 3 of section 7, because it is not very well defined, not definite enough. The word "encourage" is too indefinite.

Senator WAGNER. In your State are not closed shops legal?

Mr. DEFFENBAUGH. Yes, and so are open shops legal.

Senator WAGNER. This does not change that at all, but just keeps it in status quo.

Mr. DEFENBAUGH. This would put it in the hands of a majority to say whether or not you shall have a closed shop.

Senator WAGNER. No; not unless the employer says it. If the employer does not agree with it, it is not to be done.

Mr. DEFENBAUGH. I may have read it wrong, but that is my impression.

Senator WAGNER. It simply says the employer shall not impose it on the workers unless the majority of the workers say they want a closed shop. But, it is a matter of agreement and cannot become effective unless the employer agrees to it.

The CHAIRMAN. It is just permissible. If a majority of the employees vote to have a closed shop they can go to the employer and ask him to make a contract to that effect. The contractor can say no, and that is the end of it. Of course, they can then strike, but there is nothing in the law to compel the employer to sign an agreement for a closed shop, even though two-thirds or three-quarters or nine-tenths of his employees decide to have a closed shop.

Mr. DEFENBAUGH. I am quite glad to hear you say that, Mr. Chairman.

Section 9, clause B is objectionable because I believe that would give persons who are not employees of a particular plant, but who are members of a craft the right to compel a bargain between the plant and its employees.

I have a particular objection, as a lawyer, to the latter part of section 10, clause C, where this language appears:

> In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

I believe that is a bad provision, because the rules of evidence we have developed in the courts of law, in my opinion, by the hundreds of years that some of them have been in effect, have proven their value and proven that they are correct in presenting evidence and in presenting evidence that is not competent to prove the point.

Senator WAGNER. Are you acquainted with the public-utilities law of your State?

Mr. DEFENBAUGH. Yes, sir.

Senator WAGNER. Do you know that law has a provision of this kind in it?

Mr. DEFENBAUGH. Yes, sir; and I know it is a poor thing in practice.

Senator WAGNER. Are you acquainted with the Federal Trade Act?

Mr. DEFENBAUGH. No.

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Senator WAGNER. That has a similar provision, and so has the act creating the Interstate Commerce Commission, and so has the act creating the Communications Commission; and in fact, I think almost every administrative agency of the Government which is quasi-judicial in its functions has a similar provision or almost identically this provision.

Mr. DEFENBAUGH. I know of many of them, but not all of those you mentioned am I familiar with.

Senator WAGNER. Each of them has that same provision or a similar provision.

Mr. DEFENBAUGH. I say, I am not familiar with all of these you mention, but I know some of them do have that provision.

Senator WAGNER. Of course, we have a review in court; and unless the findings are sustained by evidence, the court would set the findings aside.

Mr. DEFENBAUGH. I object to that, because in the Ohio Rules of Evidence, in review, the scintilla rule has held for many years, and our supreme court is now changing that rule somewhat. It would seem to me that might be satisfactory if, under 10, clause F, which says if the findings of a board are supported by evidence, would be changed so that it would say if they are supported by a preponderance of the evidence.

Senator WAGNER. I have sat on an appellate court, and I have had to read records where the only question involved was the weight of the evidence. It is very hard to decide from reading the record to decide the weight of the evidence, you have got to look at the witnesses; and it is the impression they make upon you and upon the jury that is more persuasive as to what the preponderance of the evidence is, rather than a cold reading of the record afterward, where you haven't the opportunity of observing the demeanor of the witnesses while they are testifying.

Mr. DEFENBAUGH. That is true, and I believe the court in reviewing the evidence will be very slow to reverse a case on the weight of the evidence.

Senator WAGNER. But they always see support for the findings. If there is no evidence to support it they will readily set it aside.

Mr. DEFENBAUGH. Yes; that may be correct.

Going further, another objection is very valid, is that section 10, clause F, gives the Court of Appeals of the District of Columbia jurisdiction over these cases, as I understand it, all over the United States, so that an employer might be brought from anywhere in the United States to the District of Columbia, in such a case.

Senator WAGNER. No; they go to the circuit court in their district.

Mr. DEFENBAUGH. I thought I read that in clause F that they may go to the District of Columbia. It says:

> The Board may petition any circuit court of appeals of the United States within any circuit wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, or the Court of Appeals of the District of Columbia.

If what you say is true, and this jurisdiction is geographical to each court, I would have no objection to that, but we should not be brought clear across the United States.

Senator WAGNER. There is no such intention.

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Mr. DEFENBAUGH. I do not believe it is fair in section 13, clause 1, to permit quite such a wide latitude of the Board or agency to investigate any private business and make it produce all of the private records. I think the power there is too broad.

It is a fact, and I have heard it here for 2 days now, that in most of our Government agencies that is allowed; but on the other hand, if Government agencies have too much power without limitation, they could get intolerant sometimes, and the tendency is to increase their scope of power rather than to decrease it.

Those are the reasons I have given, why the Hocking Glass Co. is opposed to this bill. We believe recovery will be faster if the Government gets more out of the businesses and puts more into businesses.

Senator WAGNER. Of course, this examination you have referred to can only be on matters which relate to the particular controversy and must be pertinent.

Mr. DEFENBAUGH. Yes; that is true, but that would take pretty nearly the whole records of the company, except possibly the record of sales.

Senator WAGNER. I do not know how else to limit it, unless to say it will be limited to relevant matters.

The CHAIRMAN. Is there anything further?

Mr. DEFENBAUGH. No, Mr. Chairman; thank you.

The CHAIRMAN. The following letter has been received by myself relating to this hearing, which I will ask to be inserted in the record in full.

(Said letter is as follows:)

LOS ANGELES, CALIF., *March 20, 1935.*

Hon. DAVID I. WALSH,
Chairman of the Senate Educational Labor Committee,
Senate Office Building, Washington, D. C.

HONORABLE SIR: We, the undersigned, are the elected and duly authorized representatives of the employees to the company organization of the Axelson Manufacturing Co., known as the "joint conference plan", and we certify that we have secured 205 signatures, representing 90 percent of factory employees, in opposition to the Wagner bill and ask that you use your influence to see that this measure is defeated in committee.

The joint conference plan as operated at the Axelson Manufacturing Co. since the summer of 1933 has been entirely satisfactory and without coercion or intimidation by the management. It is our belief, as well as that of our members, that we can be better served under the present arrangement than we can under the proposed Wagner disputes bill.

We feel the Wagner bill would give undue power to union labor, who represent only about 5 percent of labor in this State.

Very truly yours,

WILLIAM D. BUCKMAN,
HARRY L. BOGGS,
EDW. B. FARRELL,
Employees' Representatives Joint Conference Plan.

The CHAIRMAN. The hearing will now recess until 10 o'clock tomorrow morning.

(Thereupon, at 1:10 p. m., the hearing was recessed until Thursday, Mar. 28, 1935, at 10 a. m.)

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NATIONAL LABOR RELATIONS BOARD

THURSDAY, MARCH 28, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met at 10 a. m., in room 318, Senate Office Building, Washington, D. C.

Present: Senators Walsh (chairman), Murphy, and Murray.

Also present: Senator Wagner.

The CHAIRMAN. The committee will please come to order.

Is Mr. James L. Donnelly present?

Mr. DONNELLY. Yes, sir.

STATEMENT OF JAMES L. DONNELLY, EXECUTIVE VICE PRESIDENT ILLINOIS MANUFACTURERS' ASSOCIATION, CHICAGO, ILL.

The CHAIRMAN. Your full name is James L. Donnelly?

Mr. DONNELLY. Yes, sir.

The CHAIRMAN. Where do you reside?

Mr. DONNELLY. Chicago, Ill.

The CHAIRMAN. You appear before this committee representing the Illinois Manufacturers' Association?

Mr. DONNELLY. Yes, sir.

The CHAIRMAN. You may proceed with your statement.

Mr. DONNELLY. The Illinois Manufacturers' Association was organized 42 years ago for the purpose of representing the common interests of Illinois industry. It comprises approximately 2,600 manufacturing industries, with 10,000 industrial executives, employing in normal times over 500,000 employees. The membership of the Illinois Manufacturers' Association, on account of the diversity in the products manufactured and of the variety in size of the individual manufacturing concerns, may be said to represent a cross-section of American industry.

A brief reference to the conditions of the manufacturing industry in general in Illinois at the present time may assist the members of this committee in understanding the apprehension of the manufacturing executives of our State regarding the implications in the Wagner labor disputes bill, S. 1958.

Much misapprehension exists regarding the actual condition of the majority of manufacturing industries. The issuance of unduly optimistic reports by various agencies and the publication from time to time of reports of some manufacturing concerns who have had the good fortune to show some increase in their sales and in their

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financial position over the previous year have given the impression that conditions in Illinois manufacturing industry generally are greatly improved. This is not the case.

The 1935 industrial census released by the United States Bureau of the Census on March 5, 1935, reveals that the value of products manufactured in Illinois that year slipped back to the point which they reached 20 years ago, or in 1914, and were approximately 60 percent less than in 1929. The number of manufacturing establishments decreased from 15,333 in 1929 to 10,740 in 1933, a decrease of 4,593, or about 30 percent.

The CHAIRMAN. In what period of time was that?

Mr. DONNELLY. Between 1929 and 1933.

The CHAIRMAN. That is the decrease in the number of manufacturing establishments in Illinois?

Mr. DONNELLY. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. DONNELLY. Figures for 1934 will show some improvement over 1933, but the gain will not be appreciable for the great majority of Illinois industries.

In the majority of instances where manufacturing industries have experienced a real betterment such industries were manufacturing consumer goods. The demand for such products has been materially aided by the large amount of money being expended for relief purposes. Manufacturing industries generally, and particularly those in the heavy or capital-goods groups, where the bulk of unemployment lies, are still in a definitely unsatisfactory condition. It is a fact not generally recognized that the great majority of manufacturing concerns are relatively small industries. Over 80 percent of the manufacturing industries in Illinois employ less than 100 persons.

Moreover, a large proportion of the manufacturers in Illinois, probably over 50 percent, are reduced to a hand-to-mouth basis as regards working capital. Through the years of the depression they have fought a life-and-death battle to maintain their working capital. If it is further seriously impaired, these manufacturers must give up, and when they do give up the thousands of employees they have kept and are keeping off the unemployed list must give up also. It is doubtful whether the average small manufacturer in Illinois has a cash working capital of his own much greater than 10 percent of his annual pay roll. Moreover, a substantial portion of the larger manufacturers in Illinois are not much better off in this respect. It is obvious from these facts that the great majority of the manufacturing industries in Illinois at this time are particularly susceptible to the disturbing influence of unsound legislative panaceas, designed to impose new burdens and restrictions and calculated to cause more uncertainty and increase operating costs.

The CHAIRMAN. Have you seen the pamphlet issued by the Philadelphia Manufacturers' Association entitled "The Flight of Capital and Industry from Massachusetts"?

Mr. DONNELLY. I believe I have, Senator.

The CHAIRMAN. It is along the line you are discussing?

Mr. DONNELLY. Yes; I believe that is correct, Mr. Chairman.

We have had an opportunity to canvass the views of our members on the Wagner labor disputes bill and we are prepared to say that they are universally and unqualifiedly opposed to this measure.

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They regard the introduction of this bill at this time, when industry is making desperate efforts to provide employment and promote recovery, as distinctly unfortunate. They believe that the promotion of radical, ill-conceived legislation of this character tends to create apprehension and uncertainty on the part of productive enterprise and materially retards improvement in business conditions. They regard this bill as the most amazing attack upon the rights of employers and the great mass of workers that has thus far been devised.

The alleged purpose of this bill is to "equalize the bargaining power of employers and employees" and "to encourage the amicable settlement of disputes between employers and employees." As a matter of fact, the terms of the bill are in direct contradiction with this declared purpose. The proposal should be entitled "A measure to promote strife and increase unemployment." It is clearly designed to discourage the friendly settlement of industrial-relations problems, to encourage strife and dislocation, and to delegate to labor union agents, aided and abetted by a so-called "National Labor Board", a dictatorial power over American industry.

The obvious purpose of this bill is to force the closed shop upon the industry with the aid of Government compulsion. The bill is designed to confer special privileges exclusively upon one group. The employer, the unorganized worker, the member of a minority union, or of a plant employee representation group are given no protection.

This bill would place a premium on strikes, nullify employees' contracts, destroy employee representation plans, force the closed shop upon employers, guarantee legal irresponsibility of labor organizers, provide for gag rule of industry, insure domination of labor boards by organized labor agents, provide for star-chamber proceedings by labor boards, and result in unlimited inquiries and investigations by Government agents.

This bill does not merely concern employers brought before labor boards, or involved in union disputes. It directly affects the lives of merchants, professional men, farmers, and every member of the consuming public.

The bill creates a National Labor Board of three members with extensive powers to summon witnesses on complaint of anyone, to take evidence on matters not covered by the complaint, at will, to conduct hearings without regard to rules of evidence, to demand books and papers indiscriminately and without responsibility. Its findings of fact are inclusive if supported by any evidence.

This bill, advanced as a means to promote recovery, would in fact retard recovery. It would create strife, widen the gap between the worker and the employer, destroy the peaceful and satisfactory relations which now generally exist, simply in order to satisfy the desire of a small group of organized labor leaders for a complete monopoly.

A brief examination of some of the specific provisions of the bill evidences the amazing disregard which the proponents of the measure apparently have for the most elementary rights of the employer and the great body of American workers.

Section 7 of the bill would make it unlawful to interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing,

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and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The scope of the phrase "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection" is so extensive that it would effectively tie the hands of employers behind their backs and leave them subject to any punishment that ruthless labor leaders or union organizers or their following might care to subject them to.

By this bill, employees are specifically given the right to use all means they may conceive, including strike, boycott, coercion, terrorization, and all other of the common means of unscrupulous organizers and labor unionists to force an employer to do their bidding, but it is made unlawful for the employer to so much as raise his hand or his voice to protect himself, his business, or his employees.

Section 8 prohibits that an employer "interfere with the formation or administration of any labor organization or contribute financial or other support to it."

"Other support" would no doubt be construed by labor boards to include moral support, advice, or counsel, the furnishing of a place to meet, expression of opinion as to the relative merits of organizations or leaders, encouragement, or any other form of support.

If an employer should lend support of any kind to the employees in organizing or maintaining their own union, that would apparently make their union ineligible to represent the employees, even though its membership constituted a majority.

The result is, as a practical matter, no plan of plant-employee representation, particularly if a smaller concern would ever be eligible to act as the representative of the employees.

With very few exceptions, the A. F. of L. has a monopoly of outside unions, and the net result would be, as a practical matter, that under this bill only the A. F. of L. would be eligible to represent any employees through the "majority rule."

In practice, employers do give counsel, advice, and encouragement to their employees in any movement or enterprise that the employer believes will be advantageous to the employees. This advice and counsel is given in a manner that is entirely in conformity with the provisions of the National Industrial Recovery Act.

If employers did fail to give counsel, advice, and encouragement to such movements, whether they be a plant or company union, a baseball team, a benefit association, a savings association, a social organization, or any other such movement, it ordinarily would fail.

Generally, the employer is the employee's best friend and ordinarily employees have confidence in their employer in connection with their group activities that causes them to turn to the employer for counsel, advice, help, and encouragement.

This bill, contrary to what is the fact, is predicated upon the assumption that the employer is not the employee's best friend, but is the employee's enemy, is one who is not to be trusted by the employee even in matters where the employee has confidence in his employer and desires to turn to his employer for counsel, advice, help, or encouragement in his group activities.

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The whole spirit of this bill is to make enemies of employers and employees.

The bill is clearly calculated to destroy the satisfactory relations that exist in most plants between employer and employee, and thus to destroy the entire spirit of cooperation between employer and employee in this country, which is essential to progress and prosperity.

Under section 8 (3), it would be unlawful for an employer—

> be discrimination in regard to hire or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization—

provided he may make a closed shop agreement with a labor organization which is eligible to represent the majority, that is, with an A. F. of L. labor union.

This, taken with the other provisions of the bill, is a most extraordinary subsidy to the A. F. of L., amounting almost to a guaranty of the closed A. F. of L. shop.

Under section 8 (4) it would be unlawful—

> to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.

As has been pointed out, there is no requirement as to what may be considered "testimony."

Under this provision, an employee would be encouraged to malign and abuse the employer, and thereby secure a lease on his job.

> Section 9 (a) provides that representatives designated * * * by the majority of the employees in a unit * * * shall be the exclusive representatives of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *.

In the *Houde Engineering Corporation case* the National Labor Relations Board discussed the standards set-up in the National Industrial Recovery Act, and held:

> It is obvious that these desired standards and the "united action of labor and management", which Congress contemplated, could scarcely be effected except by collective agreements between employers and representatives of employees resulting from collective bargaining.

Thus, under section 9 (a), the representatives of a majority would have the exclusive right to make agreements covering rates of pay, wages, hours of employment, or other conditions of employment, under which every employee would be bound for the period of time set in the agreement.

Section 9 (a) makes a proviso that specifically permits any individual employee or group of employees to present grievances to their employer, clearly making this right of an individual or minority group his or its sole right with respect to the sale of his or its labor.

There has never been anything in the history of this country to compare with these provisions, aside from slavery and war-time conscription.

Whether an employer has engaged in an unfair labor practice, as defined in this bill, is inherently a question of fact.

This bill provides:

> The findings of the Board as to facts, if supported by evidence, shall be conclusive.

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There are no provisions in the bill as to what shall be "evidence." Section 10 (c) provides:

In any such proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling.

There is no requirement that witnesses be sworn.

There is no requirement that any of the members of the Board have had judicial training or experience; in fact, any agent or agency designated by the Board may hold hearings.

It is inconceivable, under such circumstances, that there would not always be "evidence" to support any findings the Board or its agent or agencies might choose to make.

Thus, the Board would have the power to determine finally and conclusively the guilt of any employer, the ineligibility of any labor organization to act as the representative of the employees, and the character and extent of "restitution" required to be made.

Under section 10 (h), appeals shall not "unless specifically ordered by court, operate as a stay of the Board's order."

The effect of this provision is that the Board's decision would become immediately effective and could not, as a practical matter, be stayed until after the lapse of such a considerable time that would be involved in applications to the court in hearings on such applications for a stay as would make the stay ordinarily too late to prevent the damage that the Board's decisions would effect.

Under section 13, the Board or its agents or agencies would have the power of access and examination and investigation to all affairs of every employer; would have the power to compel testimony and production of documentary matter by all employers.

No employer would be excused from attending, testifying, or producing documents on the ground that this testimony or evidence might tend to incriminate him or subject him to penalty or forfeiture.

Anyone who would resist or impede or interfere with a member of the Board or any of its agents or agencies, would be subject to a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

The relations between an employer and his employees go to everything that an employer does in connection with his business.

The power of investigation under these provisions is absolutely limitless.

The result of closed-shop union domination has always been to increase prices and restrict output. Any further increase of costs of industrial goods at this time would necessarily result in increased prices to the consumer, would further impair the ability of farmers and white-collar workers to buy goods produced. This would result in a decrease in consumption and further unemployment.

One of the principal reasons for the failure of the country to make more rapid strides toward reducing the army of unemployed has been the restriction on production resulting from undue increases in operating costs. This measure, if enacted, would no doubt aggravate this tendency.

The bill would, in effect, make unlawful any customary friendly relationship between the employer and his employees relating to

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terms of conditions of employment, including the fixing of compensation, hours of employment, etc.

The measure is predicated on the false premise that coercion exists only on the part of the employer, whereas it is a universally recognized fact, not only on the part of the employers, but among the great mass of workers, that many organizations who purport to represent the worker largely depend upon force and coercion for any effectiveness they might have. This bill would prevent practically any effort on the part of the employer to advise and counsel his workers regarding the condition of their employment, whereas it would permit and legalize almost unlimited coercion and force on the part of labor agents who may allege to be representatives of the workmen.

The primary problem before this Congress is, I understand, that relating to the reduction of unemployment. In determining whether the measure now under consideration is calculated to help solve this problem, it is respectfully suggested the members of this committee study the relationship of the organized labor movement in this country to the question of unemployment. We submit that such inquiry will reveal that unemployment has been unusually acute in these industries which are highly unionized and that in the instance of the majority of industries where organized labor has secured a dominant position, unrest, dislocation, and internal strife, with accompanying reduction in opportunities for employment, have been prevalent.

The manufacturers and all other citizens of Illinois have had an opportunity to closely observe the unfortunate results attendant upon the domination of several lines of business by organized labor agents.

Quite frequently the policies adopted by local agents are not consistent with, and very often beyond, the control of their superior officers. The violence in the Illinois coal fields, where the coal miners' war is still unsettled, has caused 75 deaths, 500 casualties, and million of dollars' worth of property damage, including the bombing of 25 buildings. A competent authority on racketeering activities in Chicago estimates that the racketeering cost to the citizens of that city alone has aggregated as much as $145,000,000 in a single year, or almost as much as the annual municipal budget. Quite naturally, industrial executives view with alarm any legislation which may result in this costly strife and dislocation being projected into manufacturing fields generally.

The provisions of section 7 (a) of the National Industrial Recovery Act makes generous grants of power to American workmen and their properly selected representatives. The manufacturers in Illinois are making an earnest effort to conform to the provisions of section 7 (a), as well as with the other requirements of the National Recovery Administration, although conformity to its requirements in many instances has imposed a burden of unprecedented severity. It seems manifestly proper, therefore, that the Federal Government should avoid, at this time, the imposition of additional requirements having to do with the subject of industrial relations. A measure of this kind, or any measure which is designed to increase the power of the National Labor Board, will obviously result in strife, unrest, and dislocation which may defeat the objectives of the National

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Recovery program, namely, increased purchasing power and reduction in unemployment.

Senator WAGNER. Mr. Donnelly, are you acquainted with the platform adopted by the Manufacturers Association at White Sulphur Springs at their convention?

Mr. DONNELLY. Just in a very general way; yes.

Senator WAGNER. I heard you say the majority rule is perpetuated, and that is the reason I want to read you from the platform of your own Manufacturers Association. That platform says:

> Under appropriate safeguards, all approved competitive practices and prohibitions submitted by the properly defined majority group of trade or industry shall be binding upon the minority.

There they adopted the majority rule.

Mr. DONNELLY. Even assuming for the purposes of this discussion that the majority rule, as stated in that platform from which you have just read, reflects the viewpoint of the group I am identified with——

Senator WAGNER. How is that? I did not understand.

Mr. DONNELLY. I say, even assuming for the moment that the group I represent is in sympathy with the majority rule, as suggested by the platform from which you read, I think there is a very fundamental difference between the majority rule in its relation to industry and the majority rule in its relation to labor.

Senator WAGNER. I know you consider that the same rule should not apply to the workers that applies to your own association.

Mr. DONNELLY. I do not admit that.

Senator WAGNER. What is that?

Mr. DONNELLY. I do not want to be understood as saying that, Senator Wagner.

The CHAIRMAN. Have you finished your statement in that regard, Mr. Donnelly?

Mr. DONNELLY. No; I have not?

Senator WAGNER. I beg your pardon. I thought you had finished.

The CHAIRMAN. You may proceed.

Mr. DONNELLY. In the abstract, the majority rule should apply to the employer in the same manner and with the same force that it does to the worker, and I think there cannot be any disagreement about that insofar as the theory of the matter is concerned. As a practical matter, any agreement that the employers may enter into under a code of fair competition is subject to approval by the United States Government; and the Government is a party to that agreement, with the purpose of safeguarding the interest of the public; whereas the majority rule in its application to the employee is not subject to that same careful supervision by governmental authority. So, in their operation, they are entirely different, and in the result, I think it is obvious they are entirely different.

Senator WAGNER. That is your answer?

Mr. DONNELLY. Yes.

The CHAIRMAN. Are there any further questions?

Senator WAGNER. No; I have no more questions.

The CHAIRMAN. Thank you, Mr. Donnelly, for your appearance and the statement you have made.

Mr. Cunningham, if you will come forward the committee will be pleased to hear you.

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STATEMENT OF JAMES D. CUNNINGHAM, PRESIDENT REPUBLIC FLOW METERS CO., AND FORMER PRESIDENT OF THE ILLINOIS MANUFACTURERS' ASSOCIATION, CHICAGO, ILL.

The CHAIRMAN. Your full name is James D. Cunningham?

Mr. CUNNINGHAM. Yes, sir.

The CHAIRMAN. You are president of the Republic Flow Meters Co.?

Mr. CUNNINGHAM. Yes, sir.

The CHAIRMAN. You are also former president of the Illinois Manufacturers' Association?

Mr. CUNNINGHAM. Yes, sir.

The CHAIRMAN. What does the Republic Flow Meters Co. manufacture?

Mr. CUNNINGHAM. We manufacture industrial instruments—meters for measuring steam, water, gas, air, and so on.

The CHAIRMAN. Have you more than one plant?

Mr. CUNNINGHAM. No; just one.

The CHAIRMAN. How many employees do you have?

Mr. CUNNINGHAM. About 200.

The CHAIRMAN. Where is the plant located?

Mr. CUNNINGHAM. In Chicago, Ill.

The CHAIRMAN. Are your employees organized?

Mr. CUNNINGHAM. No, sir.

The CHAIRMAN. You may proceed with your statement.

Mr. CUNNINGHAM. Mr. Chairman and gentlemen, I am appearing here as an average manufacturer; I am not a so-called "big manufacturer", or a small one; but our 200-employee pay roll, I would say, represents quite a good average of industry in the United States.

When I read the declaration of policies of Senator Wagner's bill, I felt a little chagrined at my ability on employee-employer relationships.

We have always been fair and square with the employees. We have never given them any cause for worry, and we have never chiseled on their wages. We are paying going wages, and in some instances we are paying higher than the going wages, so that we are not the chiseling type—the kind that is dominating the employees; and I know a lot of them.

I walk through the shop and ask them how their families are; and they know me, and I know them, and our relations have always been very pleasant.

I think that is the average condition in the average-size shop today. The employer is not dominating his employees. I just can't see it that way. Our relationships have been very good with our men. But what I would like to know is what you are trying to accomplish in this bill. Are you trying to get after those chiseling types of employers? If you are, I am for it 100 percent.

The CHAIRMAN. What is being attempted in this bill, using your own industry as an illustration, is that if your employees desire to form a labor organization of any kind or character they choose, they shall have that right; and that if you should try to prevent or interfere or coerce your employees against forming an organization, you would be charged with an unfair practice and be subject to the provisions of this law.

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The bill also provides that if these men of your employees shall form whatever kind of organization they see fit, they can elect representatives of the group of 200 men, and these representatives will be the spokesmen for the other employees in meeting with you for the purpose of settling grievances that may arise.

The law would require you to meet them and in good faith discuss grievances, which you probably already do.

This bill would not compel you to accept any terms and conditions they may seek to impose on you, but you could not slam the door in their face, and you could not meet them in a hostile attitude, and in an attitude of unfriendliness, and in a predetermined disposition not to yield in any way and not to listen to them.

This law also provides that if you discharge any one of your employees because he did join a particular organization of his own choosing, and that was the reason for his discharge, that would be an unfair labor practice.

It also provides that you shall not interfere with the free choice of representatives, or punish by discharging those who are members.

In brief, the law seeks to provide unrestrained and uninterfered methods for your employees to organize and to approach you through any organization of their choosing, for the purpose of discussing with you their grievances. That, in brief, is the purpose of this law.

It does not tell you to enter into any agreement, but you are free to do as you wish about that. It does not compel your men to form an organization. It does not indicate the kind of organization, but so far as this bill is concerned, they can go on just as they are. However, the moment they start to form an organization and you interfere with them to the extent of coercing them, then you would be subject to what is described in this bill as an unfair labor practice.

Do I make it clear?

Mr. CUNNINGHAM. Very much so, Senator.

The CHAIRMAN. Very many people think this bill forces employees to organize, but it does not. A good many people think it favors trade unions as against so-called "company unions" that are not dominated by the management. It does not do that.

A great many think you would be expected to actually make a contract with your employees when they come to discuss collective bargaining with you. That is not required in this bill. We cannot make you or any other employer in a free country like this make a contract that you do not wish to make.

Mr. CUNNINGHAM. Thank you, Senator Walsh, for that explanation.

The CHAIRMAN. There is a feeling among employers which I think we all realize is due partly to some propaganda, and due partly to some views expressed by some who have appeared in favor of the bill, that the whole thing tends to national unionization of labor. I think a great many employers have that feeling, that the result or the tendency of this legislation will be in that direction, but there is certainly nothing in this bill to indicate that, and there is no disposition on the part of this committee to favor any form of organization as against any other form, so long as the organization is a free one, so long as it is not a makeshift organization, so long as it is not dominated by the employers.

Have I helped you, Mr. Cunningham?

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Mr. CUNNINGHAM. Yes; you have, Senator Walsh. However, may I say this, I do not really see any occasion for it.

The CHAIRMAN. Of course, there is not any law against stealing, because 99 percent of the people do not steal, do they?

Mr. CUNNINGHAM. No.

The CHAIRMAN. Yet we have to have a law against stealing, because there are people who do it.

Now, there are some employers, according to the evidence Senator Wagner's committee has heard, and other departments of our Government, that have shown a disposition not to recognize the theory of collective bargaining, which, after all, is simply the right to meet and confer in good faith to see if you can reach a friendly agreement, and there are other employers who have sought to direct their employees, through antagonism against one form of unionism, in favor of another form of organization, and there have been some abuses among the limited number of employers in the mass.

Mr. CUNNINGHAM. Do you not agree with me that the mass of employers are such as I represent?

The CHAIRMAN. Yes; I know the mass means well, and intends well, and we recognize they have been subjected to extreme measures at times upon the part of groups who are organized among their employees. We recognize that, but on the other hand, there have been some employers who have not acted in good faith, and this legislation is to define the rights of employees leading up to collective bargaining.

Mr. CUNNINGHAM. There are certain things I want to bring out.

Senator WAGNER. May I ask a question here?

Mr. CUNNINGHAM. Certainly.

Senator WAGNER. You favored the workmen's compensation law in your own State, didn't you?

Mr. CUNNINGTON. Yes.

Senator WAGNER. That was not passed because the majority of the employers treated the employees unfairly when they were injured, but the majority took care of the workers formerly. However, there was a minority where, when a worker was injured, he was left to his own remedies, and we had to make a law of universal application because of the minority of employers that would not care for their workers when they were injured. For that reason most of these laws are directed against the minority, and not against the majority at all.

Mr. CUNNINGHAM. Don't you think on the workmen's compensasation, we all got behind that because it really clarified the situation that was rather doubtful before, as to the amount of injuries for which compensation should be paid?

Senator WAGNER. It changed the fundamental law of the land, in that a workman was compensated, whether he was guilty of negligence or not, and gave him absolute security.

Mr. CUNNINGHAM. Of course, we are up against a lot of ill-advised and perhaps not such honest attorneys, who would take our employee's cases and make a mountain out of a molehill, and they are doing that now somewhat in the sylacosis cases, which are rather difficult to handle.

The CHAIRMAN. Of course, what you are afraid of is that your workmen will be forced by pressure to organize a union and that

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they will be dominated and controlled by agitators to make them organize a union.

Mr. CUNNINGHAM. Yes; that is correct.

The CHAIRMAN. Of course, that is being done now, without this law.

Mr. CUNNINGHAM. Yes; but it is not being done in such a drastic measure as it will be done under the new bill.

Senator WAGNER. Of course, I do not want to be understood that in every case where workers make a demand to try to better their conditions because some agitator has induced them to make the demand, and if you refuse, that in many cases the workers strike for better conditions, that the strike is justified.

Mr. CUNNINGHAM. In some instances I would say yes; that is correct.

Senator WAGNER. And then I do not want to say every time the workers strike for the betterment of their own conditions, it is because of some agitator's efforts.

Mr. CUNNINGHAM. Senator Wagner, you appointed me on the Chicago regional labor board.

Senator WAGNER. I know that well enough.

Mr. CUNNINGHAM. And in that connection I want to bring out some experiences that are beneficial to both of us, I think. At the time the board was organized there were 4 labor members and 4 industrial members, and 1 impartial chairman. We heard cases on that board as a complete panel at that time, but the cases began to pile up so that we could not hear them all within the time we had. We then split it up and divided up into separate panels, its members being 1 from industry, 1 from labor, and 1 impartial chairman, and that expedited the situation very well.

However, in that connection, I have had a dose of section 7 (a) on that labor board, which, as I see it, is a mild form of labor legislation, and I am awfully fearful as to what will happen on this other form if it goes into effect.

Most of the cases that came up there were cases where a manufacturer had discharged some of his employees. We heard the case, and invariably the board would say to this manufacturer, you have got to take these men back you discharged because you discharged them on account of union affiliations.

Picture, if you can, my own plant, with labor organizers coming in there. They are perfectly able to come in, because I cannot stop them. Picture them coming in and doing that, and terribly upsetting my relations with the employees, to such an extent that some of the fellows began to lay down on their job and I fire them, which I should do, then they will run down to the labor board and haul me in there, then the grilling you get down the regional labor board is some grilling.

I felt sorry for these fellows that were brought in, they were manhandled by some of the labor members, which I think is indicative of their attitude toward an employer.

They demanded that these men be taken back, and what does that do to the morale of your organization? You fire a man because he is loafing on the job, or have various other difficulties you may get into with your employees, and then he comes back on the job after

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that, after the board forces him back, and he goes around to his fellow workers and says, "I cannot be fired, the Government protects me"—and that is said so many times—that "the Government will not allow me to be fired."

In that way, the employer might lose all hold of his employees, they run him ragged, and tell him what he can do.

In several instances I voted against these chiseling fellows, and, to use this slang expression, I gave them the works, and they should have had the works.

The CHAIRMAN. There is nothing more unpleasant in life than to have somebody in your employ whom you feel it not loyal, and whom you feel is a time server, trying to do as little as he can, and who is injuring the morale of other employees.

Mr. CUNNINGHAM. It is. I have no sympathy at all for these fellows that come in there and exploit labor and do everything they can to them, and those are the fellows I like to see given everything we can, and I have given it to them on the labor board, too.

These men that come in there are very unfamiliar with the method of unionizing a shop, they have never had it, they have worked 20 or 30 years without any union at all. Then section 7 (a) came into the picture, and these labor organizers went out and bragged about the fact that Congress in the United States had at last given them full sway over labor relations in the plants.

They said, if you join our organization we will guarantee that you will have your jobs always. They were very vicious.

These men did not want to join unions. I know a lot of them did not want to join unions, but if you have got a few in the plant that are easily swayed by the organizers, it does not take a long time for a little group to gather about and have little meetings, and then meetings at the labor halls, and they can very easily take over the plant and make a union shop out of it.

The Chicago Regional Labor Board sent a telegram to President Roosevelt the other week, a copy of which I will hand to you, and you may read it yourselves, but I will not read it aloud

The CHAIRMAN. This telegram may go into the record.

(The above-mentioned telegram is as follows:)

MARCH 26, 1935.

To the PRESIDENT,

The White House, Washington, D. C.:

The undersigned members of the Chicago Regional Labor Board directed a telegram to you on May 29, 1934, expressing the conviction that the passage of the Wagner labor disputes bill, then pending in the Federal Congress, would promote industrial strife. Our combined experience as members of your board since that date prompts us to express the same apprehension regarding the Wagner bill now pending in the Federal Congress. We are convinced that the passage of the Wagner National Labor Relations Act, containing the majority rule provisions, would be the signal for unprecedented industrial warfare throughout the Middle West. This bill, and particularly the provisions thereof designed to eliminate company employee representation plans, are predicated upon the false premise that the employers are the enemies of their employes. While the ostensible purpose of this bill is to "promote equality of bargaining power between employers and employes" as a matter of fact the terms of the bill are in direct contradiction with this declared purpose. This measure, if enacted into law, would create strife and widen the gap between the employer and the employee. It would destroy the satisfactory and peaceful relations which now exist between most employers and their employes solely in order to satisfy the demands of a limited number of professional labor leaders who

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purport to speak for the great body of American workers, but who in fact represent only a limited proportion, not exceeding 10 percent of the total number of American workmen. The entire bill is designed to force the American worker and his employers under the domination of and subject to the tribute of professional labor leaders notwithstanding the fact that in practically every industry where such domination now exists extensive strife and dislocation have occurred and wages and prices beyond the willingness and ability of the consumer to pay have resulted. We respectfully urge that this measure should not be enacted into law.

HOMER BANG.
KENT S. CLOW.
J. D. CUNNINGHAM.
LESTER ARMOUR.
WARREN JONES.
GEN. THOMAS HAMMOND.
C. W. BERQUIST.

Senator WAGNER. You sent a similar telegram last year.

Mr. CUNNINGHAM. Yes.

Senator WAGNER. So this is not new. There were other members of the Board that did not agree with you.

Mr. CUNNINGHAM. The labor members did not, of course, but this was a reiteration of what was said before.

Senator WAGNER. Is the chairman's name on here?

Mr. CUNNINGHAM. No; he is an impartial chairman.

Senator WAGNER. In other words, the employer members on the Board signed it?

Mr. CUNNINGHAM. Yes.

Senator WAGNER. I think those I appointed are still there.

Mr. CUNNINGHAM. No; not all of them, but most of us are still there. The things that prompted us to send the telegram last year prompted us to send this one, because we knew the proposed law would be worse than the law we were trying to keep up with.

The CHAIRMAN. How many members are there on the Board?

Mr. CUNNINGHAM. There are 8 industrial members and 8 labor members, about 16, and about 3 impartial chairmen.

Senator WAGNER. I think I might say here, I think this is the only regional board out of 19 in which the employers members took the attitude you did. I do not know that they are all for this proposed legislation, but they did not feel you should take the attitude you did.

Mr. CUNNINGHAM. I am surprised to hear that, but we were right worried about it.

If this new bill is passed, it creates a three-man board which I do not think can be impartial, if I may be allowed to say so.

The CHAIRMAN. You may speak as freely as you desire, Mr. Cunningham.

Mr. CUNNINGHAM. My experience on the Regional Labor Board is anything but conducive to an impartial recognition of the employer. These three men, I understand, are appointed for 1, 3, and 5 years, and after that for a 5-year term. You cannot get a business man to sit on the Board, becaose he has got to run his business, and you have got to get some professional who will sit on the Board for that term.

I doubt very much if you can get three men, if you search the country for them, taking them out of industry, men who know industrial problems, and have them sit on such a Board and give impartial judgments on labor problems.

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I think this Board is being given too much power, in that these three men are not lawyers. I do not think you will appoint lawyers on this Board, although I have the greatest admiration for a lawyer. But I doubt if you will appoint lawyers on the new Board set-up.

That means these men are more or less unfamiliar with legal practices, but you have given them a tremendous amount of legal power to hear testimony, to cross-examine, and then to make recommendations, which is really the province of the court.

These findings are going to be severe, there is no question about it. They have got the power to haul me in there, for example, and say, Cunningham, you do this, and if I do not, it is just too bad, and in that case I would like to be heard by men who are experts in jurisprudence.

Senator WAGNER. Of course, you have a chairman now who is a lawyer.

Mr. CUNNINGHAM. You mean Dean Spencer?

Senator WAGNER. Are you speaking about the regional boards or the National Board?

Mr. CUNNINGHAM. I am speaking about the National Board?

Senator WAGNER. Mr. Biddle, the chairman of the present Board, is a very distinguished lawyer from the State of Pennsylvania, and in the State of Wisconsin, Mr. Garrison is a very eminent lawyer.

Mr. CUNNINGHAM. Senator Walsh has stated, as I understand, he would not feel justified in settling labor disputes because he is not in contact with the workers. He is a splendid lawyer, but he is not in the field of the workers.

Senator WAGNER. I thought you said you were apprehensive that no lawyer would be appointed on this board. Is that your attitude?

Mr. CUNNINGHAM. No; I do not think you will appoint three lawyers on the board.

Senator WAGNER. Do you want three lawyers, or do not want one lawyer?

Mr. CUNNINGHAM. I say this, that you cannot get three men to sit on this Board who are in position to give good judgment in labor cases, because you cannot get industry to give you a man for 5 years to sit on the Board. I think this bill will absolutely open the doors to the American Federation of Labor to come in and dominate the plant situation. I may be wrong, but as I read the bill, I cannot see where any company union, or, let us say, the employee representation plan can be effectuated through this bill. We cannot say anything to our employees, we cannot counsel with them.

Senator WAGNER. Where is that in the bill? Of course, if you mean by that a union financially supported by the employer, a union of that kind, of course, cannot exist under this bill, and I doubt whether you would advocate that.

Mr. CUNNINGHAM. Yes; but, for instance, we have some bowling teams in our plant, and under this bill you could not put up a $10 prize for the men in that connection.

Senator WAGNER. Is that the basis for your objection?

Mr. CUNNINGHAM. No; but the labor organizers will pick on that, because I have seen them do that in the Regional Labor Board, and you will find them picking on the most trivial things and lay you out cold.

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I feel sorry for a fellow that has to come before the Regional Labor Board in Chicago.

The other night I was thinking about this, and I wondered why, if I was a union man, I should pay dues to the union if they have a majority in the plant, and I have got to abide by the majority rule, and I would not like to pay $2 or $3 a month because what would be the use? The majority would rule me anyway.

Senator WAGNER. What is there in the bill to compel them to join a union?

Mr. CUNNINGHAM. Nothing, of course, but the labor unions will say they must join the union, and the fellows that do not want to spend the money will be forced to do it; and I have seen that, too.

Senator WAGNER. Of course, carrying your contention to its logical conclusion, you would be opposed to any efforts on the part of anybody to induce workers for their own benefit to organize themselves into a definite organization for the purpose of furthering their own interest. I think that would be extremely un-American if we did that, that is going back to the old days.

Mr. CUNNINGHAM. Senator, I do not see any reason for this at all, and that is why I asked why do you want to put this bill through?

Senator WAGNER. I thought Senator Walsh thoroughly explained that it is for the type of employers who will not permit his employees to organize, or who has his own organization for his own purposes. I could not explain it as well as Senator Walsh did, myself.

Mr. CUNNINGHAM. That is true; he made a very clear explanation of it, but we are getting along splendidly now, and I think my company and myself present a true picture of the American manufacturers today in 90 percent of the cases. As soon as somebody comes out and tells my men that Congress has given them the right to organize and wants them to organize in the American Federation of Labor, it is going to create a tremendous amount of trouble. We are getting alone fine now, and why don't you let us stay where we are, and do something else for the small majority that do not want to cooperate with us?

Senator WAGNER. Congress has already asserted, through the National Recovery Act, that workers shall have the right to organize.

Mr. CUNNINGHAM. And we are having a difficult time with section 7 (a), too.

Senator WAGNER. You do not think they should have that right?

Mr. CUNNINGHAM. No; I don't think they need it.

Senator WAGNER. All right, if you do not think they should have the right to organize, you and I cannot agree.

Mr. CUNNINGHAM. They have the right to organize, yes; but let them organize through the proper channels, and come to the average fellow who wants to give them a square deal, and they can organize them. If Senator Walsh was on the other side of my employees, we would get along splendidly, but the trouble is we have these racketeers to deal with.

The CHAIRMAN. I am beginning to think my qualifications as chairman of a labor committee is being impeached.

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Mr. CUNNINGHAM. I really cannot get along with the labor element in Chicago, and I don't think it is any different anywhere else.

I would be glad to answer any further questions you may have.

The CHAIRMAN. Mr. Craigmile, if you will come forward, the committee will be glad to hear your statement.

STATEMENT OF C. S. CRAIGMILE, BELDEN MANUFACTURING CO., REPRESENTING THE ELECTRIC INDUSTRY OF ILLINOIS

The CHAIRMAN. Your full name is Charles S. Craigmile?

Mr. CRAIGMILE. Yes, sir.

The CHAIRMAN. And what is your residence?

Mr. CRAIGMILE. Hinsdale, Ill.

The CHAIRMAN. What is your position?

Mr. CRAIGMILE. Vice president in charge of manufacturing of the Belden Manufacturing Co. of Chicago.

The CHAIRMAN. What do they manufacture?

Mr. CRAIGMILE. Insulated copper wire.

The CHAIRMAN. How large is that industry?

Mr. CRAIGMILE. Our plant employs a total of about 1,000 people.

The CHAIRMAN. Are your employees organized?

Mr. CRAIGMILE. They are not.

The CHAIRMAN. You may proceed with your statement.

Mr. CRAIGMILE. Mr. Chairman and members of the committee, I appear before this committee as a member of the Illinois Manufacturers' Association, and as a representative of the electrical industry in our State. The purpose of this brief is to register a vigorous protest against Senate bill 1958, known as the "Wagner bill", and to recommend to this committee that in the interest of business recovery, it should not be favorably reported.

Last year this committee had a similar bill before it for consideration. No piece of proposed legislation caused such a storm of protest as this one, and yet in spite of that protest, the committee favorably reported a revised measure. It soon became evident that this bill, which was Senate bill 2926, could not be passed, and Public Resolution No. 44 was finally substituted. In my opinion, gentlemen the reason the Wagner bill was not passed by the Senate was that a majority of the Senators realized that back of the stated purpose of the bill was the danger that it would give an organized minority power which would seriously harm the right of every employee in this country to freely obtain employement. That danger still exists.

Senate bill 1958, which is now before this committee for consideration, states its purpose as follows:

> A bill to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

The last words, "other purposes" are, indeed, well chosen. As a matter of fact, this bill might well be entitled:

> A bill to turn over the all-important employee-employer relationship to organized labor, to take away all bargaining power of employees and to increase labor disputes.

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With that title, the words "other purposes" could be omitted.

Back of every justified piece of legislation should be a definite need which that particular bill, if voted into law, will at least help to fill. Laws should not be put on the statute books merely because a minority group, large or small, feels duty bound to introduce bills at every session of this Congress to advance its selfish interests. If membership in an outside labor organization is desired by a majority of the employees in this country, let them decide that issue themselves. You should not consider passing a law to take away from them their freedom of choice, and force them to join any organization not of their own choosing.

The proponents of this bill seem to be laboring under the delusion that the relationship between employee and employer is one of antagonism, instead of one of cooperation. Nothing could be further from the truth. Alfred P. Sloan, Jr., president of General Motors Corporation, in an address before the Illinois Manufacturers' Association on December 11, 1934, so well expressed the real essence of this relationship that I will quote his own words:

> Looking toward the achievement of our objective, there is nothing more important than the establishment and maintenance of an effective working relationship between employer and employee, in which the rights and interests of each may be mutually understood and kept in equitable adjustment. A happy and contented employee, with a reasonable assurance of a job, and with the maximum possible continuity of employment, means increased efficiency and effectiveness throughout the whole production machine, and even more importantly, exerts a stabilizing influence on our whole social structure. * * * There is a direct relationship between business in general and workers in general, as consumers of industry's products. Unfortunately, many apparent conflicts arise; but, fortunately, and I say this most sincerely, analysis demonstrates that by far the great majority of those conflicts are traceable to a lack of mutual understanding, or a lack of appreciation of the facts, or too short-sighted viewpoint on one side or the other. In most part, they are psychological in character, and trivial so far as their economic significance is concerned. Progress in this important relationship can only be made to the extent that enlightened employers and enlightened employees realize that they have a community of interest and that community of interest dictates the wisdom of maintaining the highest possible degree of cooperation and the most harmonious of relationships.

Mr. Sloan is the head of a very large corporation. I represent a medium-sized one. I have used his exact words to show the necessity of cooperation and not antagonism between employee and employer only because he has expressed it so much better than I could hope to. Our own experience over the 20 years I have been intimately familiar with it has clearly demonstrated that the remarkable degree of cooperation between our employees and our management, which we have enjoyed, has been the very cornerstone of our continued successful existence.

There are two possible approaches to the solution of the question as to how sound industrial relations can best be maintained. One is the solution offered by our present industrial experience. Under this arrangement, every workman is free to choose what form of organization, if any, he believes will best further his interests. They have chosen, and there is overwhelming evidence to show that they want to retain this freedom. The fact that the membership of the American Federation of Labor has never exceeded 10 percent of employed people indicates clearly that employees of their own free will, will never submit to domination by any labor organization.

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The other proposed solution to the problem is the one which underlies this bill, which is the extension of the closed shop. Again, on this issue, Mr. Sloan made the following exceedingly clear statement on the opposition to this proposed solution:

> First, I believe that workers should be free. Their right to work should not depend upon their membership in a labor organization. Secondly, it is axiomatic in employer-employee relationships that organized labor, as such, can never be satisfied. It cannot afford to be satisfied, for being dissatisfied is the very foundation of its continued existence. It is the necessity of never stopping in its demands that forces leaders of organized labor to exert an unsound and uneconomic influence on our whole national economy.
>
> In my judgment, industry should not only have the right, but should demand full opportunity to demonstrate, unhampered by the restriction of legal regulation and on the basis of experience, that method that serves best to promote, in the broadest way, the welfare of the greatest number.

I understand that Mr. Green, in appearing as a proponent of this bill, described his organization as a bulwark against strikes and threatened it would no longer urge workers to be patient if this bill should fail. It is time that threats of this type as a means of forcing unjustified legislation be stopped, or at least looked at for their true value. I personally heard Mr. Dillon make the same sort of statement before the National Recovery Board. Let us look to the workers in the automotive industry to see what their answer has been. The conference board service letter issued under date of February 28, 1935, by the National Industrial Conference Board, includes the following statement in regard to the results of the recent elections in the automobile plants held under the supervision of the Automobile Labor Board:

> Nominating elections have been conducted in 15 plants. Of a total of 73,862 eligible voters, 66,122, or 89.6 percent, have participated in these elections. The latest composite figures giving the total votes cast in these elections show that 76 percent of the voters have indicated no labor-group affiliation, and are therefore carried as "unaffiliated." Employee-representation bodies have been specified in 11 percent, American Federation of Labor unions by 4 percent, labor unions not affiliated with the American Federation of Labor 6 percent, and the remaining 3 percent have blank or void ballots.

In other words, gentlemen, the American Federation of Labor, which represents approximately 10 percent of employed people, has a perfect right to represent their members, but under no circumstances should it be assumed that they express the opinion of the large majority of employees. This majority is not threatening you with strikes if this bill is not passed, and as a matter of fact, the passage of this bill is much more liable to bring serious industrial disorders than its failure.

The principle of majority rule is written into this bill in the following words in section 9–a:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other basic conditions of employment: *Provided*, That any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing.

This principle takes away the right of a minority group, even though it be 49.9 percent of the total, to select representatives of their own choosing for collective bargaining or to bargain indi-

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vidually. The President of the United States made the following statesmanlike pronouncement of this vital question at the time of his announcement of the creation of the Automobile Labor Board:

> In the settlement just accomplished two outstanding advances have been achieved. In the first place, we have set forth a basis on which, for the first time in any large industry, a more comprehensive, a more adequate, and a more equitable system of industrial relations may be built than ever before. It is my hope that this system may develop into a kind of works council in industry in which all groups of employees, whatever may be their choice of organization or form of representation, may participate in joint conferences with their employers, and I am assured by the industry that such is also their goal and wish.

Gentlemen, Senate bill 1958, the so-called "Wagner bill", should not be reported favorably by this committee. It carries with it immeasurable potential power to do serious harm to our whole industrial structure. It would do much to break down the sound relationship which has successfully been built up between employee and employer, and on the continuation of this relationship much of our hope for recovery depends.

The CHAIRMAN. Thank you, Mr. Craigmile, for presenting your views.

Mr. Muir, will you please come forward, and the committee will hear you?

STATEMENT OF ROBERT W. MUIR, SECRETARY OF JEWEL TEA CO., INC., BARRINGTON, ILL.

The CHAIRMAN. Your name is Robert W. Muir?

Mr. MUIR. Yes, sir.

The CHAIRMAN. What is your business?

Mr. MUIR. General counsel and secretary of the Jewel Tea Co., Inc.

The CHAIRMAN. How many employees has that company?

Mr. MUIR. Somewhere between 3,200 and 3,500.

The CHAIRMAN. Has it one plant or more than one plant?

Mr. MUIR. There is a main plant, but there are other plants.

The CHAIRMAN. Are the employees organized?

Mr. MUIR. There is a so-called "employees' representation plan" in effect.

The CHAIRMAN. Do you desire to submit a brief?

Mr. MUIR. I haven't a brief prepared, but I would like to discuss the matter briefly.

The CHAIRMAN. We will be pleased to hear you.

Mr. MUIR. The Jewel Tea Co. operates throughout 42 States of the Union, with 85 branches, so that you can see they are widespread. Our business is manufacturing and distributing grocery and food specialties.

The CHAIRMAN. Do you distribute them by mail?

Mr. MUIR. By "wagon routes", so-called. Our primary business is of a rather unique kind. Our men call on their customers once every 2 weeks. At the time they call they deliver to the customer what she purchased at the previous call 2 weeks before. They collect for it, and then solicit her order for 2 weeks hence.

They are traveling mostly away from the branch, and we do very little selling from the 85 branches. That is our primary business.

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We have a premium form of merchandise which accompanies our selling groceries. We advance the premiums to our customers as required and as a reward for their trading with us.

The CHAIRMAN. How many of your employees are engaged in the manufacturing or producing plants, and how many are engaged in distribution?

Mr. MUIR. I would say there are 150 employees in manufacturing, and that probably all of the rest of them are in the distributing end of the business.

The CHAIRMAN. How are the distributors paid, on a percentage or per hour basis?

Mr. MUIR. In all except 7 branches—and when I speak of branches I mean 85 different warehouses and branches throughout the United States—we pay in all except 7 of them $22.50 as a base rate to our 1,500 salesmen, who radiate from those branches, and in addition thereto we have a sliding-scale commission which starts at 10½ percent on gross sales up to about $175 a week, and then it increases up to 15½ percent as it goes up; in other words, as the sales go up the commission progressively increases.

The CHAIRMAN. What is the average pay as a result of the base pay and commission?

Mr. MUIR. I would say it is about $25.

The CHAIRMAN. Do they pay their own expenses out of that?

Mr. MUIR. No, sir; the company furnishes the car, gasoline, and all of the goods.

The CHAIRMAN. You may proceed.

Mr. MUIR. In addition to the primary business which we have, we also have 85 chain stores located in the metropolitan area of Chicago, a rather small number; but we get again a cross section of the chain-store method of distribution.

The CHAIRMAN. Do you have to obtain licenses in these communities where you distribute by wagon?

Mr. MUIR. In some communities we do, and in some we do not, depending entirely on the local situation.

The CHAIRMAN. You may proceed.

Mr. MUIR. It seems to me that the Wagner industrial disputes bill is going to have a disastrous effect upon the distribution as well as to the manufacturing end of the business. In manufacturing we have a good many complaints against the bill which have been spoken of in previous evidence, but when we come to its effect on distribution this is a matter which affects 120 million people in the United States.

Basically, anything which adds even a small amount to the cost of distribution as it at present is constituted means a serious barrier to trade and is apt to cause a hardship on many people.

If the Wagner industrial disputes bill does what I fear it will do, it will lead to a campaign of unionization of all of the sources of production and distribution; and I have personal reasons for believing that it will certainly lead to campaigns for organizations of the distributive end. If it does that, it is going to have, first, not only a direct effect but, taking for granted that unionization may mean higher wages, better working conditions, and therefore greater expenses, although it does not necessarily mean that; but if it does, it will mean an increase in the cost of manufacturing, wholesale distribution, and retail distribution, and all of this must be added to the

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cost of goods, affecting the purchasing power of 120 million people, if the distributors are to "break even" themselves and stay in business.

Basically, the very existence of these distributive agencies depends on the ability of the people to buy as reasonably as possible. That is particularly true in times like these when not all of the people of the United States are employed.

I have a feeling if the Wagner industrial disputes bill is passed as it is at present constituted, it is going to cause a serious increase in the cost of living. I have no particular objection if a way could be worked out to prevent the forced unionization of men to this proposed legislation. In other words, the theory back of the Wagner industrial disputes bill might be all right, but it is the practical working out, the reality of it, that we must face.

So far as the Jewel Tea Co. is concerned, when our men leave their branch, they operate alone. There are roughly 500 of the 1,500 men who operate out of city branches, and the other 1,000 live in the outside communities, or in the small cities, and go to their routes from their place of residence. If these men are approached for unionization purposes—and we have had that happen to us—the opportunity for coercion is almost unlimited, with no possible protection from it; and it seems to me that as matters stand now, if this bill becomes a law, when that knowledge is spread throughout the United States in the different areas in which we operate, there is going to be said to our men what has been said to them already in many of the localities in which we operate: "Gentlemen, the United States Government wants you to join a union, and it is the wish of the President that you do so."

That has been said to a good many of our men, and we have had our men come in and ask if that were true.

If both the employer and employee were subject to the same regulations, so far as organization is concerned, if coercion and force could be taken away from the organization of these unions, which are being organized primarily not necessarily for the good of the men but for the dues which those men can produce—if we can provide against the use of coercion and force, it seems to me we would have a much better chance of insuring the stability of employment and of being able to keep our men satisfied and contented.

We have had some labor trouble, not a great deal of it. As our men work on their different routes a party of union men in an automobile will drive up. A union man on each side will open the car doors and one of them will say, "Well, Buddy, have you joined the union yet?" He answers "No." And they say, "Well, you better join or expect trouble." Under such threats of violence some of our men feign sickness and some quit rather than face the risk.

The Jewel Tea Co. has done a great deal for its men. Last December it distributed $50,000 in extra prize money; it distributed $75,000 of extra wages to the men for the last 24 weeks of 1934, and there is another distribution of $75,000 to employees who are such on April 15, 1935. From the standpoint of our own people, they do not wish to be unionized, and if they are it is going to be more or less by compulsion, some of which we have encountered already.

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If it would be possible to have an outside labor organization in which no coercion or duress could be used to influence men, or if a man was free to choose whether he would join or not, I would have no objection to any attempt an outside labor organization might make to organize our men, and I think most of the employers throughout our industry would have no objection, but the trouble is there is that coercion and intimidation.

An employer under the Wagner bill must follow almost a level course; he cannot discourage organizations, he cannot encourage organizations, he must not make any statement which can be interpreted as interfering in any way with them. Therefore he is helpless, and the union organizer makes use of that fact and tells the employees that the United States Government is back of this bill to force organization of our men.

I thank you, Mr. Chairman, for this privilege of presenting my views to you.

The CHAIRMAN. Mr. Muir, we appreciate your presenting your views to us.

Mr. Pierce will please come forward, and the committee will be pleased to hear you.

STATEMENT OF ROBERT I. PIERCE, REPRESENTING MANUFACTURING INDUSTRIES IN CHICAGO HEIGHTS, ILL.

The CHAIRMAN. Mr. Pierce, will you please give your full name for the record?

Mr. PIERCE. Robert I. Pierce.

The CHAIRMAN. Where is your residence?

Mr. PIERCE. Chicago Heights, Ill.

The CHAIRMAN. You are representing the manufacturing industry in Chicago Heights, Ill.?

Mr. PIERCE. Yes, sir.

The CHAIRMAN. What variety of industries are there in Chicago Heights, Ill.?

Mr. PIERCE. We have a diversified line of industries, the predominant industries being iron and steel.

The CHAIRMAN. How many industries are there in your association which you represent here?

Mr. PIERCE. Thirty-four industries.

The CHAIRMAN. Are each of those industries organized?

Mr. PIERCE. They are not. Two of them have employee representation plans.

The CHAIRMAN. You may proceed with your statement.

Mr. PIERCE. I desire to express briefly the views of the industries in Chicago Heights, Ill., with respect to Senate bill no. 1958.

Chicago Heights is an industrial community, located in the southeastern part of Cook County, Ill., and the welfare of the community largely depends upon the successful operation of our industries. Cordial, cooperative, and friendly relations exist between the various groups within the city, and harmonious relations also exist between the employees in our factories and their employers, and there have been no serious labor disputes in Chicago Heights for a great

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many years. There are 34 manufacturing concerns in Chicago Heights, employing 4,319 persons. Seventeen of these industries employ 50 or less persons, 5 employ from 50 to 100, 7 employ from 100 to 200, and 5 employ over 200.

We believe that apparently the framers of this bill feel that there is considerable strife between employers and employees and that harmonious relations between these two groups are impossible. We feel that such an assumption is based upon situations which are not representative of industry generally, and that this legislation is without recognition of the facts as they actually exist.

In most of the factories in our community, there is and always has been a very close relationship and contact between the employee and the employer, and in many instances both the employer and employees have grown up together in the same plants. Anything that would destroy that friendly relationship which might, and probably would, result in industrial strife and conflict would unquestionably have a demoralizing effect upon the community.

Following this thought further, I think we should consider what this might mean. If these people are not employed they cannot pay taxes, and if they cannot pay taxes you cannot operate your schools, and these people become relief clients, and so on, affecting the entire life of the community.

In Chicago Heights we have a very large percentage of foreign-born population, and about 10 percent Negro population; yet in all of the 32 different nationalities in our community and with this greatly mixed population we have had no serious labor trouble for a number of years, which proves the employment relations have been and are satisfactory.

We also feel that this bill is not only unnecessary and unwarranted, but it is also unfair to the employers of labor and workers. It rightfully prevents an employer from interfering with his employees from exercising their rights to join a labor organization if of their own free will and accord they desire to do so, but it does not prevent a labor organizer or others from harassing, coercing, and threatening his employees into trying to force them to join a labor organization against their own free will and accord. Under the agreement requiring as a condition of employment that a person belong to a labor organization, it would either force a man into a labor union or prevent him from getting a job, and establish the closed shop in industry. Every man has the right to seek honest employment where he can find it, and he should not be compelled to do something against his own desire and right to secure that job. If he wants to join a union, that may be his privilege, but he should not be compelled to do so in order to get a job.

Senator WAGNER. Are you speaking of the closed shop when you say he has got to join a union to get a job?

Mr. PIERCE. Under the closed-shop provision, he would; yes, sir.

Senator WAGNER. That, of course, is done by agreement. If an employer does not want a closed shop, there is no closed shop, and he must give his consent to such an agreement before it is in effect.

Mr. PIERCE. I take the position that a man should be able to get a job without having to be forced into a union in order to get the job. He should have the right to get work where he can find it.

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Senator WAGNER. The only thing that changes it is that the employer and the majority of the workers enter into a closed-shop agreement. That is not imposed upon him by any law. By the way, what State are you from?

Mr. PIERCE. Illinois.

Senator WAGNER. The closed shop is legal in Illinois, and this legislation simply retains the status quo, and if they are legal they shall remain legal; and by this legislation we do not intend to illegalize contracts in the State that are now legal.

Mr. PIERCE. Of course, we are opposed to the closed shop.

Senator WAGNER. Exactly, but the employer would have to consent to it before there could be a closed shop in your own industry.

Mr. PIERCE. You might have to consent to it in order to keep your plant operating.

The bill would also recognize a Communist group as a labor organization, and it would compel an employer to bargain with such a group if the representatives were selected by the majority of the employees. It could even force an employer to sign a closed-shop agreement with a Communist group and compel a man to become a Communist before he could get a job.

Senator WAGNER. It might interest you to know that the Communists are as much opposed to this bill as you are. There are some Communists awaiting here, with emotion almost, to be heard against the bill.

Mr. PIERCE. We further believe that this bill is also an attempt to destroy employees' representation plans, and that it would also take away from an individual his right to deal directly with his employer, and force employees to organize only through outside labor unions.

The 1933 census of manufactures, released by the United States Department of Commerce on March 5 of this year, shows that of the 10,740 industrial establishments in Illinois, 6,361 employed 50 or less persons, and 1,521 employed from 50 to 100 persons. The statistical report of the Illinois Department of Labor, released March 22, shows that of the 1,996 manufacturing industries reporting to the State department of labor, 883 employ 100 or less persons, and 690 employ over 100 and less than 200. These two statements indicate to me that industry in Illinois is largely made up of relatively small units, each unit employing a comparatively small number of persons. The census of manufactures statement referred to above also shows that in 1933 there were 2,380 fewer industries in Illinois than in 1931, and 4,583 fewer than in 1929.

It is my opinion that many industries do not know today where their pay roll is coming from 30 days hence, and if industry is forced into closed-shop agreements and employees are forced into labor organizations, with costly strikes and labor disputes, that it will be the last straw that puts many of these remaining industries over the line into bankruptcy, closing down these plants and causing more unemployment.

The CHAIRMAN. Are there any further questions?

Senator WAGNER. I believe I have no further questions.

The CHAIRMAN. If Mr. Sherwin will come forward we will be pleased to hear him.

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STATEMENT OF DONALD G. SHERWIN, VICE PRESIDENT, CATERPILLAR TRACTOR CO., PEORIA, ILL.

The CHAIRMAN. Will you state for the record your full name?

Mr. SHERWIN. Donald G. Sherwin.

The CHAIRMAN. What is your occupation?

Mr. SHERWIN. I am vice president of the Caterpillar Tractor Co.

The CHAIRMAN. You appear here representing the agricultural implement industry?

Mr. SHERWIN. No; that is not strictly true. I do not represent the industry, but only represent my own company.

The CHAIRMAN. Where is your company located?

Mr. SHERWIN. Peoria, Ill.

The CHAIRMAN. How many employees have you?

Mr. SHERWIN. About 5,000 factory employees.

The CHAIRMAN. Is that all in one plant?

Mr. SHERWIN. There are a few located in San Leandro, Calif., where we perform one operation.

The CHAIRMAN. Are your employees organized?

Mr. SHERWIN. They are not, but I think a few months ago there was an attempt to unionize our foundry in which there are about 750 people. We have no way of knowing how complete that organization is.

The CHAIRMAN. You may proceed, Mr. Sherwin.

Mr. SHERWIN. I have come here with no prepared statement, and first, I would like to say I was particularly interested in your Senator Walsh's comments explaining the purposes of this bill, and as a result of that, I would like the courtesy, if I might, of inquiring of the members of the committee on one or two points.

I take it the management of a business is by far much more interested in harmony with its employees than anyone else could possibly be. We have never had any company union in our organization, and we are, generally speaking, opposed to that idea. We have done everything we could to keep a close communion between our employees and ourselves. We pay on an average approximately twice the applicable minimum rate under our code.

It seems to me the thing we fear primarily in this legislation is that it tends to emphasize the importance of separating the management on the one hand and labor on the other. I do not think anyone can question the right of employees to organize to correct evils, and I certainly know there is no legal question as to the right; but what we fear and apprehend is that a mandate—not a mandate exactly, but encouragement is given to an outside organization, under the theory that there is an implied encouragement in this bill to organize when no particular reason or purpose for such organization exists.

Let me amplify that by saying this, referring to section 9, which seems to me to be the heart of the bill, it is there provided that a majority of the employees shall have the exclusive right to bargain on the subject of hours, rates of pay, and other employment conditions.

Does it not seem to you, that if that is the case and the shop is not organized, that those people who are going to be in the minority can only make their vote effective if they do join a union, and it seems

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to me that is very unfortunate. It places a weapon in the hands of people who are not interested in harmonious relations between management and labor in that business. It is an amplied Government sanction to encourage outside labor organizers to go out and organize for that purpose.

It seems to me to tend to break up all we want to accomplish, and that is harmony in business, by emphasizing the importance of the separation between the employees on the one hand and management on the other.

I think Senator Wagner or Senator Walsh this morning indicated that the real purpose of this legislation was to strike at those who are what I would call "unintelligent empolyers", who do not seem to appreciate that their success, as well as the success of their business and employees, lies in cooperation. What you are striking at is trying to protect those people who have to deal with unintelligent management, and yet in so doing you are creating a machine which tends to separate and draw up battle lines, if you please, where none exist at the present time, and that is an extremely unfortunate implication of the act.

I want to call attention also to one point on which I would like a little enlightenment. We say in this act that no one can be required to work, which is proper; but can it possibly be true that by law we can impose upon a minority in a plant the results of negotiation by representatives for whom they had not voted. I do not understand how that can possibly be done as a matter of law. It seems to me it is wholly unconstitutional to expect that a majority can represent people who have either not voted or who have definitely voted for some other candidate. I do not quite understand how that is constitutional.

Then I was interested in Senator Wagner's comment to Senator Walsh when he challenged the statement of a previous witness as an injustice to a certain elevator operator—how that could possibly constitute a dispute which would affect interstate commerce. That is away over my head; and if that is the kind of extenuated construction that can be given to the provisions of the bill, it is very disturbing. I am just trying to find out what complications might flow from that sort of construction, if the other provisions are to be similarly construed.

Senator WAGNER. Of course, that kind of complication could only come into consideration if it would threaten a strike which was apt to threaten interstate commerce. That is not new law. Judge Hughes in the *Appalachian case* stated that something which might happen in a community—in a strike, or whatever it might be—closing up a factory which that community depended upon for its livelihood, and which stopped the machinery of manufacture that would tend to dry up the wells of commerce, would affect interstate commerce. I think that is rather obvious, and I don't think that needs any legal technician to appreciate.

Mr. SHERWIN. I cannot agree with you, but isn't it true you have expressed a generality? We all agree, by and large, that the typical employer is interested in giving his employees a fair deal.

Senator WAGNER. Exactly.

Mr. SHERWIN. If it is a generality, isn't it more apt to be true that the encouragement given here to organizers of labor may be

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used more to foment discord by treating extreme cases in a way ordinary cases should not be treated, rather than to encourage the fruition of the natural development of the common interest between industry and its employees? The employers are more interested in that than anyone on the outside, because the future of their plant depends upon the success of their employees.

Senator WAGNER. Are you in favor of section 7 (a), as written into the law?

Mr. SHERWIN. When I come to a discussion of 7 (a) I am confused when you speak about it, because there have been so many adverse opinions as to what it means.

Senator WAGNER. Taking it from your standpoint, do you think it should have been included in the law?

Mr. SHERWIN. I do not think so, unless it was clearly explained what it meant.

Senator WAGNER. You think it should be qualified?

Mr. SHERWIN. I think so.

Senator WAGNER. I think this bill clarifies it.

Mr. SHERWIN. I do not think so.

Senator WAGNER. It is not your kind of clarification.

Mr. SHERWIN. It is an unconstitutional clarification, I think.

Senator WAGNER. Do you think the workers should have a right to organize?

Mr. SHERWIN. Certainly they should have the right to organize, but they should have the right to organize themselves when they have an injustice and not have somebody come in from the outside and organize them when there is no necessity.

Senator WAGNER. That can be done today.

Mr. SHERWIN. It is not the language I refer to so much as the implication.

Senator WAGNER. How are you going to protect the people's rights?

Mr. SHERWIN. Let me suggest a way, as I see it. I cannot help but believe, for the reasons I have stated, this bill is unconstitutional. I think the power is reposed in the State to treat with relations between employer and employee, and I think that is just where it should be.

Senator MURPHY. Do you see any analogy between majority control in industry and majority control in a political unit of a government?

Mr. SHERWIN. Our country being the democracy it is, and based on the principles it is, has always recognized the necessity of electing candidates by majorities. That is integral with our system of government. But when it comes to the question of negotiating as to your right to work for someone else, I think the situation is vastly different.

Let us take, for instance, a plant that has 5,000 employees, and let us assume 40 percent might be skilled and 60 percent unskilled—although I will not say that is at all analogous to my own plant—would you feel if the unskilled laborers were organized in some kind of union, they should have a right to bind 40 percent of skilled employees in the plant?

I think that is abhorrent to the Constitution of the United States.

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Senator MURPHY. Let me answer your question by asking another. Do you suppose the votes of the illiterates in our population ought to count as much as the votes of the higher educated elements?

Mr. SHERWIN. I think that is a hard question to ask me. I think what we have now in our political system, the way it is—I think it is better.

Senator MURPHY. Isn't that a little bit aside from the point?

Mr. SHERWIN. Yes.

Senator MURPHY. You made a classification of your industrial workers, and I made the classification as to the political voters.

Mr. SHERWIN. I did not make the classification on the basis of intelligence.

Senator MURPHY. I understand it was because some are skilled and some are not skilled, and that is only a training of the hand, or a training of the mind; and so, to speak in the same way of citizens, that seems to me to be entirely proper.

I should like to have you answer that question, where there is any analogy in the principle between majority control in government, we will say, and majority control in industry; is there any analogy in principle?

Mr. SHERWIN. Why certainly there is an analogy, but the difficulty is we have grown up for 159 years with a democratic system, and under that we have an almost universal voting franchise.

Senator MURPHY. Of course, the sponsors of the bill would not concede there is a distinction. Our democracy is an organization of various units of government, such as the States, counties, cities, and townships, and this is an organization of the units of individual employees. It is a democratic organization, according to the theory of it, and they could come and vote on the basis of what basis they will sell their labor and the conditions under which they will work. If the majority decides, do you take that as undemocratic?

Mr. SHERWIN. I certainly do, because I think the right to earn a living is vastly different from the right to vote, no matter how sacred the right to vote is.

Senator MURPHY. Do you go back to the basis they are stronger as one unit?

Mr. SHERWIN. Certainly; I believe in representation.

Senator MURPHY. But you do not believe in majority representation?

Mr. SHERWIN. No, sir; I do not.

Senator MURPHY. What figure would you use?

Mr. SHERWIN. I am not competent to say, but maybe the Supreme Court of this country, if the question came up to it on that basis, and it was 75 percent or 80 percent, might say for all practical purposes, that is just, but I am sure that a majority of 50 percent plus one cannot bind the other 49 percent, and I do not think they should, because they might not work at the same kind of work, might be wholly different classes of employees, and there is no distinction made in this bill as to employees, but it is just by number, not by classes, or anything else.

Senator MURPHY. There is no distinction as to who can vote, either, except they are of age.

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Senator WAGNER. Industry itself seems to have adopted the majority rule, in the Congress of American Industry and the National Association of Manufacturers. Do you remember that convention?

Mr. SHERWIN. I am not familiar with it.

Senator WAGNER. You know who composed it, of course?

Mr. SHERWIN. The National Association of Manufacturers.

Senator WAGNER. Yes; and the Congress of American Industries, and it is supposed to represent substantially all of the large employers of the Nation.

Mr. SHERWIN. I assume that is so, but I have not read the document.

Senator WAGNER. I will read to you from a provision of their platform adopted at that convention, as follows:

> Under appropriate safeguards all approved competitive practices and prohibitions submitted by the properly defined majority group of trade or industry shall be binding upon the minority.

That is an adoption of the majority rule.

Mr. SHERWIN. I might say we have already filed our views on competitive practices, and I have personally appeared before the National Industrial Recovery Board in that regard. We have very decided views on that, and we are very much opposed to the great bulk of competitive practices. I did not vote for that.

Senator WAGNER. Are you acquainted with the so-called "representation plans" which the large industries have organized in their factories?

Mr. SHERWIN. I am acquainted with an occasional one, but not in a general way.

Senator WAGNER. You know they exist in a great number of the large industries?

Mr. SHERWIN. Yes; and I think they are very proper.

Senator WAGNER. Those industries are all opposed to this bill, as I understand, because they fear it may interfere with their representation plans.

Mr. SHERWIN. I think it is very definite it would.

Senator WAGNER. Of course it would so far as the employers supporting the organization is concerned, and I do not think you would approve that, but we are not going into that because we may not agree. But here is the point, in these organizations they call the representation plans, the representatives are elected by the majority of the workers, and when they are so elected, they represent all of the workers, so that they have the majority plan in their particular instances, but they seem not to approve it in this bill as it affects the so-called "organization."

Mr. SHERWIN. Let me say this, and I am speaking for myself as an individual, I really believe if you could have true representation in a plant, and you knew there was absolutely no intrusion from anyone outside of your employees, the majority representation would be vastly different than under the circumstances created by this bill.

Senator WAGNER. Of course, this bill provides for an election.

Mr. SHERWIN. But when you have an election somebody has to put up candidates. and the great group of people are unorganized and are not in a position to put up candidates as are outside organizers with a prearranged slate.

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Senator WAGNER. Isn't that so with the representation plan the same as any other plan?

Mr. SHERWIN. In the average case it should be somebody inside of the plant that should be elected to represent the employees of that plant.

The CHAIRMAN. Is there anything further?

Senator WAGNER. No; I think not.

The CHAIRMAN. The hearing will be recessed until a quarter past two.

(Thereupon a recess was taken until 2:15 p. m., when the hearing was resumed, as follows:)

AFTER RECESS

The CHAIRMAN. The committee will come to order. Are the employees' representatives from Akron, Ohio, present? There are people here representing the Goodyear Co. and some representing the Goodrich Co. Will the representatives of the Goodrich Co. please come forward?

STATEMENT OF ROBERT L. HART, OF AKRON, OHIO, REPRESENTING THE GOODRICH COOPERATIVE PLAN OF THE B. F. GOODRICH CO.

The CHAIRMAN. Will you please state your name for the record?

Mr. HART. My full name is Robert L. Hart.

The CHAIRMAN. Who is with you?

Mr. HART. Paul Montgomery.

The CHAIRMAN. You are both operatives in the plant of the B. F. Goodrich Co. in Akron, Ohio?

Mr. HART. Yes, sir.

The CHAIRMAN. Do you have an organization of employees there?

Mr. HART. We do.

The CHAIRMAN. What is it known as?

Mr. HART. The Goodrich Cooperative Plan.

The CHAIRMAN. You are the spokesman for the representatives of the Goodrich Cooperative Plan?

Mr. HART. We are.

The CHAIRMAN. What is the name of the organization of employees?

Mr. HART. The Goodrich Cooperative Plan.

The CHAIRMAN. How is it financed?

Mr. HART. By the B. F. Goodrich Co.

The CHAIRMAN. How much money do they pay toward financing your organization?

Mr. HART. They pay the representatives $15 a month, the committeemen $20 per month, the chairmen of committees $25 a month, and the president $30 per month.

The CHAIRMAN. In addition to their other salaries?

Mr. HART. That is right.

The CHAIRMAN. I suppose your expenses here are paid for by the company?

Mr. HART. They are.

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The CHAIRMAN. How is this paid, is it given to you in an envelop, by a check, or how?

Mr. HART. In an envelop, in cash.

The CHAIRMAN. When you receive your weekly pay you are given this envelop?

Mr. HART. No; that is paid once per month.

The CHAIRMAN. Has there been any discussion of this bill by the representatives?

Mr. HART. There has been quite a bit.

The CHAIRMAN. But not, I suppose, by all of the employees?

Mr. HART. Yes; there has been quite a bit of discussion of the Wagner bill throughout the factory by the employees.

The CHAIRMAN. That is, individually, but not in a meeting?

Mr. HART. That is right.

The CHAIRMAN. Let me know something about your organization; has it an enrolled membership?

Mr. HART. It does not.

The CHAIRMAN. Is it like the other organizations we have had presented to us here, namely, an organization of the employees who vote by ballot secretly once a year to elect their representatives?

Mr. HART. That is right.

The CHAIRMAN. Then the representatives listen to the grievances of the employees and present them to the employers from time to time during the year until the new representatives are chosen?

Mr. HART. New representatives are chosen if the old representative is not properly performing his duties.

The CHAIRMAN. Is there any other organization than this representation-plan organization in the plant—have any of the trade unions an organization in this plant?

Mr. HART. The American Federation of Labor has a local in this plant.

The CHAIRMAN. How many members have they?

Mr. HART. It would be just a guess on my part if I gave it.

The CHAIRMAN. I understand that.

Mr. HART. I would say less than 1,200.

The CHAIRMAN. What is the total number of employees?

Mr. HART. Approximately 11,500.

The CHAIRMAN. How many employees participated in the election of last year?

Mr. HART. Approximately 75 percent.

The CHAIRMAN. Did these members of the American Federation of Labor participate?

Mr. HART. They took advantage of the plan; yes.

The CHAIRMAN. Did they ballot?

Mr. HART. I do not know whether they balloted or not; it is a secret ballot.

The CHAIRMAN. You would know whether they voted or not by seeing them at the polls, but would not know how they voted?

Mr. HART. Certainly; because a man can cast a blank ballot and you do not know whether he voted or not.

The CHAIRMAN. You may proceed with your statement.

Mr. HART. Mr. Montgomery and myself have been sent here with our expenses paid by the B. F. Goodrich Co. at the request of the

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representatives of the Goodrich cooperative plan to ask this committee to report unfavorably on the Wagner labor-disputes bill.

This bill is definitely in favor of the American Federation of Labor who represent a small percentage of workers in Akron. The Goodrich Co. employs approximately 11,500 factory workers in the city of Akron and more than 85 percent have availed themselves of the opportunity of using the cooperative plan as a method of collective bargaining.

At present the situation in Akron is serious, not because of the employee representation plans, but because of the small percentage of American Federation of Labor workers who are trying to force the companies to grant them exclusive recognition. The Wagner bill is favoring this small group and so we believe it very unfair.

A worker should have the right to use a representative who is compensated by the company if he believes that he can accomplish his purpose by using such a representative.

It is utterly ridiculous for an intelligent man to claim that a representative elected by the workers and receiving a small amount of compensation would sell out to his employer. Such a statement is not even worth while arguing. The American worker is better educated and more conversant with the labor situation than the worker of a few years ago. That is why the employee representation plan appeals to him as a more sensible way of bargaining than the regimentation of labor on one side of the line and industry on the other.

There is not any sound objection to the practice of paying representatives to settle the grievance of employees with their employer. The so-called "company union" presents an opportunity for the prompt settlement of troubles. It breeds a mutual feeling of well-being in both the employee and the employer. A contented worker will pay more attention to his job and benefit both the employer and himself. The employer has a higher grade product and the employee can make more money under the incentive system of concentrating on his job. It can therefore pay for itself in this way.

The compensation on a job as representative also causes keen competition for that job and a desire of the representatives to work hard for the employee so he may be reelected at the end of his term. The employee representation plans also provide a means of recalling any representative who does not properly handle the affairs of his constituents.

It must be remembered that the arrangement for compensation of employee representatives was made at the request of the employees and is a form of collective bargaining. If the employee has no objection to his representative receiving compensation, then certainly some third person upon the outside ought not to protest against that which the employees have been willing to accept.

The presence of financial inducement certainly would tend to cause representatives to be chosen who will be independent of the company and true servants of their constituents.

Gentlemen, we, in Akron, believe sincerely that the cooperative plan form of representation is the plan that the great majority of workers wish. We believe that the threat of strikes retards pros-

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perity and therefore heartily recommend that the committee report unfavorably on this bill.

I have here, Mr. Chairman, a tabulation of accomplishment of this cooperative plan, which I would like to have in the record.

The CHAIRMAN. You may put that in the record.

Mr. HART. This tabulation is as follows:

Some of the many accomplishments of the Goodrich cooperative plan.

Vacation plans for 1933, 1934, and 1935.

Reinstatement of the disability insurance clause in group insurance policies at no added cost to employees.

Time and one-half for Sunday and holiday work.

A guaranteed minimum of 3 hours' compensation for employees reporting for work.

Improvement of working conditions insuring higher pay.

The transfer of over 4,000 workers who otherwise would have been laid off.

The revision of the service credit plan, restoring service credits to over 400 employees, with 5 years or more of service.

The adoption of a seniority rights plan which protects the jobs of long-service employees.

The adoption of the cooperative pension plan.

The CHAIRMAN. Let me say to you that I am troubled about the financial state of your organization. This bill, if enacted in its present phraseology, is likely to prevent your present financial system from being carried out.

Mr. HART. That is correct.

The CHAIRMAN. As the bill is drafted, your employers would be permitted to pay you for the time which you actually lose while you are engaged in collective bargaining among yourselves as representatives of the employees with your employer, but I am inclined to think the bill would forbid, or the labor board created under the bill would prohibit or forbid, your company from paying you a definite sum like $25 per month. Had you thought of that?

Mr. HART. I had, but I understand the bill does not allow them to finance, directly or indirectly, any organization.

The CHAIRMAN. The bill as drafted allows the employer to pay the time lost in performing your duties as representative during working hours, but the pay must be the same amount of pay that you would have received if you remained at your work.

Mr. HART. That is not entirely fair at all, because some workers can represent their constituents just as well if they are being paid 70 cents per hour as a man being paid $1 per hour, and I believe the flat rate is the best.

The CHAIRMAN. How much time do you spend at this work?

Mr. HART. I would say approximately 12 to 14 hours a day, during working time, and outside of that, 30 or 40 hours a month to do my job properly.

The CHAIRMAN. How much does the company pay you per week?

Mr. HART. They pay me $30 per month, but you get 75 cents per hour at any time you are on your regular job, and, of course, that is less than I make, and I just about average it, that is all.

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The CHAIRMAN. Then you are not within the provision if the amount paid you is practically what you lose from your employment.

Mr. HART. To properly represent the employees, a man must put in a lot more hours per month than what he can put in on his regular work. I put in as high as 12 to 14 hours a day at this job of representing the workers.

The CHAIRMAN. Then that day you would not get any pay at your work, but this other pay is in lieu of that?

Mr. HART. I get 75 cents per hour, but I would not get any pay at my regular work.

The CHAIRMAN. That is what I mean, if tomorrow, for instance, you were engaged with some other representatives in negotiating some grievance with the company, you would not get any pay in your weekly envelop for the day's work, and the company allows you as a representative so much per month?

Mr. HART. They pay 75 cents per hour, then $30 per month.

The CHAIRMAN. The 75 cents per hour is the time lost and the $30 a month is what you are paid. I am just submitting this for your consideration. What is your occupation in this industry?

Mr. HART. Machinist.

The CHAIRMAN. Thank you for your appearance and your statement of your views.

Will the representatives of the Goodyear Tire & Rubber Co. please come forward?

STATEMENT OF A. B. TREMBLEY, CHAIRMAN OF THE GOODYEAR INDUSTRIAL ASSEMBLY OF THE GOODYEAR TIRE & RUBBER CO., AKRON, OHIO

The CHAIRMAN. Will you give your full name for the record?

Mr. TREMBLEY. A. B. Trembley.

The CHAIRMAN. How many other employees are there here with you?

Mr. TREMBLEY. There are five others besides myself, Mr. Chairman.

The CHAIRMAN. One is W. L. Cash?

Mr. CASH. Yes; that is right.

The CHAIRMAN. Another is named E. R. Baskey?

Mr. BASKEY. Yes, sir.

The CHAIRMAN. Another is named H. W. Harmon?

Mr. HARMON. Yes, sir.

The CHAIRMAN. Another is named J. Otterman?

Mr. OTTERMAN. That is correct.

The CHAIRMAN. And the last one is named J. Shirley.

Mr. SHIRLEY. Yes, sir; that is correct.

The CHAIRMAN. You may be seated, gentlemen. Mr. Trembley, you are chairman of the committee of representatives who are elected by the employees in the Goodyear Co.?

Mr. TREMBLEY. I am chairman of the committee elected by the Goodyear Industrial Assembly to present a protest against the Wagner Labor Dispute bill here today.

The CHAIRMAN. And the other gentlemen are members of the same committee?

Mr. TREMBLEY. Yes, sir.

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The CHAIRMAN. Now, what is the name of your organization?

Mr. TREMBLEY. The Goodyear Industrial Assembly Plan.

The CHAIRMAN. How many workers are there in the Goodyear Co. that belong to that plan?

Mr. TREMBLY. They are not members of the plan.

The CHAIRMAN. But they participate in the elections?

Mr. TREMBLEY. Yes, sir.

The CHAIRMAN. How many employees are there?

Mr. TREMBLEY. There are approximately 16,000 people that are affected by this plan.

The CHAIRMAN. How many participated in your election?

Mr. TREMBLEY. Between 80 and 90 percent.

The CHAIRMAN. When was the last election?

Mr. TREMBLEY. Last fall, in October, at which time there was a vote taken which showed that 81.4 percent voted for this plan.

The CHAIRMAN. How many representatives were elected in that election?

Mr. TREMBLEY. There were 40 representatives elected and 10 senators.

The CHAIRMAN. How many representatives?

Mr. TREMBLEY. Forty representatives and ten senators.

The CHAIRMAN. That is a new plan, what does that mean?

Mr. TREMBLEY. I was going to explain that our plan is patterned after the Congress of the United States. In other words, it is a two-body plan, a senate and house of representatives.

I will further state, Mr. Chairman, that this plan was formed at the request of the employees back in 1919 at a time when there was no necessity for such a plan, because at that time we were enjoying prosperity and high wages, but the employees themselves felt they should have a share in the management of that organization. They, therefore, requested the management to draw up a plan along that line with their assistance that would be beneficial to the employees and the mangement as well. This plan was, therefore, originated in 1919.

The CHAIRMAN. Has that plan continued, or have you modified it from time to time?

Mr. TREMBLEY. From time to time, as conditions change, we have changed the plan some to meet the changing conditions. After the plan had been in effect for 5 years the employees, in order to reassure themselves that the plan was worthwhile, took a vote on it in 1924.

At that time there were 85 percent of the people that voted in favor of the plan.

The CHAIRMAN. Let us find out about this conference you have out there. You say you have 40 representatives and 10 senators.

Mr. TREMBLEY. Yes, sir.

The CHAIRMAN. I hope you followed our plan of paying them both alike, having them both receive the same compensation, or is there any difference?

Mr. TREMBLEY. Well, some; yes.

The CHAIRMAN. The senators get a little more than the representatives do?

Mr. TREMBLEY. No; not at all; all representatives and senators are paid the same amount of money.

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The CHAIRMAN. Is the election held at one time for the senators and the representatives?

Mr. TREMBLEY. Yes, sir.

The CHAIRMAN. What distinction do you make, first of all, in the method of selecting the senators and representatives?

Mr. TREMBLEY. Well, I might explain it in this manner, that our plan is drawn up in what is known as "40 precincts and 10 districts", so that each person is represented by a representative in each precinct, and each district has a senator.

The CHAIRMAN. Each precinct elects its representative, and the districts elect their senators?

Mr. TREMBLEY. Yes, sir; that is true.

The CHAIRMAN. What is the distinction between the duties of representatives and the duties of the senators?

Mr. TREMBLEY. I might explain it in this way: Grievances on any matter that may come from the employees will go to the representatives first. That means that an employee who may have a grievance or any other matter pertaining to the department, or something they may seek, goes to his representative. If he feels that he has not been given a fair deal, as we might say, he has the privilege of taking that to the senator or both the senators in that district, of the same problem.

The CHAIRMAN. Do they try to adjust it themselves, or do they bring it before the whole body of senators?

Mr. TREMBLEY. They do not bring it before the whole body if it can be adjusted among themselves.

The CHAIRMAN. Do both groups meet together?

Mr. TREMBLEY. They do; in separate houses, the house and the senate.

The CHAIRMAN. I take it the house has original jurisdiction in most matters, and the senate is an appeals board?

Mr. TREMBLEY. No; not necessarily. It is so patterned that if a bill or a resolution comes up before one body, say, before the house, and it is passed on by the house, it is then taken over to the senate; and if it is passed on by the senate, of course it goes before the management for approval; and if one house defeats it, naturally the bill is not approved.

The CHAIRMAN. The senate could originate a resolution which would then go before the house?

Mr. TREMBLEY. Yes, sir.

The CHAIRMAN. Suppose you decided to resolve you would petition your employer to pay one and a half times the regular pay for extra time or for work on Sunday, and the house passes that resolution, then it went to the senate and the senate passes it, then it would go representatives or senators, or both, with the management?

Mr. TREMBLEY. That is right.

The CHAIRMAN. Suppose the management turned it down, then what would happen?

Mr. TREMBLEY. Then we have a recourse to the president of the company; and after the president of the company—first, I should say it goes to the factory manager, and from the factory manager to the president of the company, then to the board of directors of the company.

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The CHAIRMAN. Then, of course, with the right to strike if they do not agree?

Mr. TREMBLEY. I may say under the Industrial Recovery Act we can appeal our case to the National Labor Relations Board.

The CHAIRMAN. Do you at any time sit in conference, either the representatives or senators, or both, with the management?

Mr. TREMBLEY. We do.

The CHAIRMAN. How often?

Mr. TREMBLEY. We have what is known as the "district", which meets once a month. Any case that may come up from the shop to the representatives or senators to this district—all the cases are made up and come to it—and this district is composed of 6 members of the management and 6 members of the assembly, 4 representatives and 2 senators—and any problem that comes up before this district meeting, which meets once a month, if we are unable to agree at the meeting, we will take a vote on the question; and if the vote is a tie, for instance, it goes over to what is known as the "joint general committee", on which committee there are 6 more members of the management and 6 more members of the congress; and if we fail to agree there, it goes to the executive committee of the company, at which the facts are all brought out, and it is up to the factory manager to make a decision on the matter.

The CHAIRMAN. Now, how are you financed?

Mr. TREMBLEY. In what respect, Mr. Chairman?

The CHAIRMAN. Where does the money come from to pay the representatives and senators for the time they devote to the work for the employees?

Mr. TREMBLEY. Mr. Chairman, they are paid for the time lost on our regular duties; and if we have some extra work to perform above that, we are paid for it at our hourly average earnings.

The CHAIRMAN. So that if you meet at night, let us say, you would be paid the amount of time which you give to this collective bargaining as though you were working for the company during those hours?

Mr. TREMBLEY. That is right; but we very seldom meet at night.

The CHAIRMAN. You may now proceed with your statement.

Mr. TREMBLY. We think it desirable first to acquaint your honorable committee with the fact that the six employees of the Goodyear Tire & Rubber Co. of Akron, Ohio, who are here present, have been elected and instructed by the Goodyear Industrial Assembly, which is an association or body created and maintained by the employees of the Goodyear Tire & Rubber Co. for purposes of cooperative and collective bargaining, to voice some of the objections of a majority of the employees of the Goodyear Tire & Rubber Co. to the enactment of Senate bill no. 1958, known as the "Wagner bill." The objections set forth are raised by us as individual employees as well as members of the committee.

The employees of the Goodyear Tire & Rubber Co. are presently represented for purposes of collective bargaining by the Goodyear Industrial Assembly, members of which have been duly elected by employees of the company under a program known as the "Goodyear industrial representation plan." The assembly is representative of the employees alone, the management having no representa-

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tion therein. The plan has been in effect and operation at the plant of the Goodyear Tire & Rubber Co. for the past 16 years and has proved to be an effective means of collective bargaining between management and men. Through the efforts of the Industrial Assembly we have built up, over a period of years, a feeling of confidence between employer and employee which the Wagner labor disputes bill would tend to tear down, destroying such benefits as we have built up.

It is not the sole and exclusive method by which employees of the Goodyear Co. may bargain with the management. It is set up as a means of collective bargaining which any employee may use or not as he pleases. There is in it no attempt to deprive any employee of the right to deal directly with the management, and no individual or group is required to use the plan in bargaining with the management.

A. THE THEORY OF THE BILL

1. Collective bargaining: The chief purpose of this bill seems to be to compel collective bargaining through organized labor by empowering the National Labor Board to subpena witnesses and to issue orders, with resort to the courts for the enforcement of such orders. This is unwelcome compulsion.

Such a program cannot possibly work to the advantage of either employee or employer. If collective bargaining is to be accomplished through compulsion, then the result is not a bargain but an edict issued by a board compelling employer and employee in their relations with each other to follow a certain program determined and laid out for them by a third person or group. The program of the bill at once robs employer and employee of freedom in their negotiations by injecting a third party or group into such negotiations.

The CHAIRMAN. Is there another labor organization, other than the one you represent, in your plant?

Mr. TREMBLY. The American Federation of Labor has a local.

The CHAIRMAN. How many members are there in that local?

Mr. TREMBLEY This is only a guess, but so far as we understand they have approximately 700 to 800 people out of the 15,000 or 16,000 we have in the plant.

The CHAIRMAN. Is there some agitation or some talk of a labor disturbance?

Mr. TREMBLEY. Yes, there is, Mr. Chairman, at the present time. This local, as I have explained, is trying to negotiate with the company for recognition, and the management of the company has not seen fit to bargain with them, that is, to sign an agreement which they want them to do.

The CHAIRMAN. In other words the representation of this local of the American Federation of Labor claim to represent a majority of the workers?

Mr. TREMBLEY. They do.

The CHAIRMAN. And has petitioned the management to recognize them as the representatives of their employees for the purpose of collective bargaining?

Mr. TREMBLEY. Yes, sir.

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The CHAIRMAN. And the management has refused to do this on the ground that they do not represent the majority of their workers, but that the organization of which you are a representative actually and does represent the majority?

Mr. TREMBLEY. Yes, sir.

The CHAIRMAN. And therefore they say they are within the provisions of 7 (a) of the National Recovery Act, and under the regulations of the Labor Board in adhering to the claim that they are engaged in collective bargaining with the organization which represents a majority of the employees?

Mr. TREMBLEY. Yes, sir.

The CHAIRMAN. Has there been any election other than the election of last fall?

Mr. TREMBLEY. No; there has not.

The CHAIRMAN. Has any election been asked for?

Mr. TREMBLEY. Yes; I might explain that last fall the Industrial Assembly requested the National Labor Board in Washington, as well as the regional board in Cleveland to conduct an election at our plant to determine who represented the employees.

The CHAIRMAN. Did you have that question on the ballot?

Mr. TREMBLEY. We would have had, but we did not take a vote, We had a petition in for that purpose.

The CHAIRMAN. Mr. Magruder, has this case come before your board?

Mr. MAGRUDER. That case has not come up for hearing before the national board.

The CHAIRMAN. Has it been heard?

Mr. MAGRUDER. Our election orders have been thrown before the court in the *Goodrich case* and in the *Firestone case*, upon petitions by the companies for review. The *Goodyear case* was before the Cleveland regional board, but for some reason or other, it has not come up to us in Washington yet.

The CHAIRMAN. I am disturbed as to whether I should hear any evidence in the matter if it is on the brink of possible serious disturbance.

Mr. MAGRUDER. So far as our Board is concerned, we have no objection to your hearing this witness.

The CHAIRMAN. I believe this witness would want to be heard on the other side also. We are not concerned about that, and the witness is here to present the record of their own organization and to show what it has accomplished, and I assume to express the wish that no bill be enacted that would interfere with it.

Mr. TREMBLEY. That is true, but the question was brought out, and I thought I would explain to you that we had requested the National Labor Board to conduct an election.

The CHAIRMAN. When?

Mr. TREMBLEY. Last fall.

The CHAIRMAN. Why didn't they do it?

Mr. TREMBLEY. For this reason, that the rules of the Board said that if we were not in conflict with the management of the company we deal with, we are not able to have an election granted, but at the same time the American Federation of Labor brought a request in to hold an election, and later withdrew their request, therefore there would be no election held.

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The CHAIRMAN. The representatives of your organization requested an election of the National Labor Board?

Mr. TREMBLEY. That is right.

The CHAIRMAN. And the representatives of the American Federation of Labor also requested an election?

Mr. TREMBLEY. Yes, sir.

The CHAIRMAN. The National Labor Board refused to take jurisdiction over your request on the theory there was no dispute between your organization and the company, but the National Labor Board had before it at the time information that another group were claiming to be representatives of the employees, did they not?

Mr. TREMBLEY. Not information, but a request asking for an election to be held also.

The CHAIRMAN. I cannot understand, Mr. Magruder, why that is not a labor dispute?

Mr. MAGRUDER. Senator Walsh, I do not know what the status is, and I would have to get the necessary information from the Cleveland regional board, which has had the case before it. I do not know what the status is, but we have not had it before us in Washington as in the *Firestone* and *Goodrich cases.*

The CHAIRMAN. Two persons or groups representing different elements of employees, both asking for an election, I should think would be evidence that sooner or later there is going to be a contention as to which one represent the majority, and the sooner an election is held, the better.

Mr. MAGRUDER. I understand there are representatives of the American Federation of Labor group here, and they possibly can explain the situation.

The CHAIRMAN. In any event, no election has been held, Mr. Trembley, and you have been going on as you have?

Mr. TREMBLEY. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. TREMBLEY. How can the Federal Government bring employees and employer harmoniously together when one or the other, or both, are driven by law to reach an end determined by an outside group? It is plain to see that the term "collective bargaining" under such a program is a misnomer.

The program of this bill, if considered in connection with a large industry, such as the Goodyear Co., where for 20 years there has been no strike or serious labor dispute, and where, since 1919, a representative plan for employee participation in management has been mutually satisfactory and helpful, would work a gross and vicious injustice both on labor and management. It would deprive us, as workers, of a tried and proved method which a majority of our fellow employees have adopted and approved and find so advantageous in our negotiations with the management. It would bring into our negotiations with the management a group who do not understand our problems and would thus engender difficulties which for at least 16 years have not arisen.

We maintain that our "family" of employees should not be molested or annoyed by uninvited and unwelcome third parties. Who knows better than we, the employees, what the employees desire? Is the labor board to tell us that what we desire is not good for us? We believe that a fair election with a secret ballot conducted by the

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Government will best subserve our rights and our desires. If the Government can open up to us a means of freely choosing our own representatives, without fear, without threat, without coercion, without outside interference, and without pressure from any source, it will have helped us immeasurably.

First. Proposed constitution of the board: The bill provides for a separate and distinct executive department of the Government to be constituted of three members appointed by the President.

Senator WALSH. You have at least seen from your experience enough developed in the case that you are familiar with in your own industry to see the value of an independent tribunal having legal and lawful authority to hold an election.

Mr. TREMBLEY. Yes.

Senator WALSH. Proceed.

Mr. TREMBLEY. We believe that if such a board is to be established there should be certain definite limitations with respect to the persons whom the President might appoint; that is, there is no provision in the present bill which would prevent the board being constituted wholly of representatives of union labor, or entirely of representatives of unorganized labor, or altogether of representatives of employers.

Second. Exclusive representation and majority rule: Section 9 of the proposed bill is vicious in that it makes representatives selected by a majority the exclusive representatives to deal with the employer. Under the bill, all the employees of an employer in a local plant might be limited in their collective bargaining to a committee of representatives from a foreign locality. This would be true especially if the board, by virtue of section 9 (b), might determine that the craft should be the unit from which the majority were chosen.

Section 9 deprives employees of a local employer of the right to freely choose the men whom they know and who in turn know local conditions, and makes it possible for outsiders, unacquainted with local situations, to control their contractual relations with the employer, especially in the event the craft, no matter where its individual members are located, is to be considered as the unit by which a majority may be chosen.

" Collective bargaining " by employees is a misnomer if the minority has no voice and no opportunity to bargain with the employer. If it is sincerely desired that employees themselves, uninfluenced, shall determine who shall represent them in their dealings with management—and this certainly is the end to be desired—then the employees of an employer in Akron, Ohio, should not be compelled to accept representatives selected by a majority of the craft, but should be permitted to choose from among their fellow employees in their own plant. To be fair, bargaining with the employer should be the right of the minority as well as the right of the majority. each man should have the right to contract free from the influence of another. Otherwise an employees' contract is regulated by someone or some group with whose policies he is not in harmony.

The exclusive majority rule requires that all of the employees shall use as their sole and exclusive representatives for collective bargaining only those representatives (or that organization) which has received the highest number of votes. Other individuals or

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groups may present grievances, but under the provisions of this bill they cannot bargain for themselves. The representatives chosen by the majority of the employees in any unit are to act as the exclusive collective bargaining agency for all the employees in such unit. So long as the exclusive majority rule prevails, minority groups are denied the right to bargain through representatives of their own choosing. Such contractual and property rights as they have in collective bargaining are abolished by this bill. This, we believe, constitutes the taking of property without due process of law.

Third. The craft as the unit for collective bargaining: The bill in question provides that the board shall decide whether the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit. Our experience is that a better understanding and a more satisfactory result is to be obtained through the employer unit, and we believe that the employer unit is the only fair means of adjusting labor disputes. Craft units would not meet local needs. The employer unit is different from the idea of the old labor unions, which held that a union should be made up of the employees of many different employers, no matter where located; but the craft union is more likely to be influenced, swayed, and agitated by paid leaders, organizers, and agitators from outside our own ranks and to become conducive of trouble because conditions differ in the several localities and representatives from the craft who are not acquainted with local situations and have little knowledge of local needs are not as competent to carry on collective bargaining as are those employees directly interested.

Possibly employer unions could not be the basis of majority in smaller local industries, but in these instances it seems apparent that the craft union should be limited to the craft in a particular locality. To leave this to the board, however, makes the whole plan too uncertain.

Fourth. Representatives and elections: While section 9 (a) of Senate bill 1958 provides that representatives may be designated or selected for the purposes of collective bargaining, by the majority of the employees in a unit, the proposed bill does not in any manner stipulate how such designation or selection may be made or shall be conducted. We believe that it is very important that this be made definite and certain. How is the majority to be determined? And is the majority to be considered as a majority of persons who may vote, if voting is the means of selection, or is it a majority of the employees in a particular plant, or the employees of a particular employer, or all employees of all employers in a particular craft, or all of the employees in a particular craft in a designated area?

Fifth. Unfair practices: Section 8 (2) of the bill provides that it shall be an unfair practice for an employer to contribute financial or other support to any labor organization. In the main this is a very laudible provision, but we do not agree that it should be considered an unfair practice for an employer to contribute toward paying a designated representative for any reasonable amount of extra time and effort expended outside of his regular working hours in meeting with fellow representatives and other matters incident to his representative capacity. We do not believe that such con-

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tribution by the employer to a representative makes the representative subservient to the employer.

If the employees themselves desire or are willing that the company compensate the representatives chosen by them for time and effort expended on their behalf, certainly such desire of the employees should be considered. If the employees themselves desire that their representatives engaged in collective bargaining should be paid and are willing that the payment shall come from the employer, then, certainly some outsider ought not to protest and no legislative act should stand in the way. How can the payment of compensation to representatives whom the employees have selected be thought to affect a representative in his bargaining with the employer? It may encourage some employee to campaign for his own selection as representative, but if he doesn't truly represent his fellow employees—if he serves the employer rather than his fellows—he will not be likely to be reelected. That person will be elected who has served his fellows best and who has been loyal to them all through. If employees want their representatives paid for extra work and if the employers are willing that such pay come from the employer, who can properly object. Can all, or even a majority, of the employees of a particular employer be swayed by the employer by reason of the fact that a few employee-representatives are to receive compensation for extra services? To imagine for a moment that because the employer pays the employee-representative, all the employees are prejudiced in favor of the employer is outside of all clear reasoning.

Sixth. Closed shop: Section 7 (3), which permits the employer to require his employees to belong to a particular labor organization if such labor organization is the representative of the majority of the employees, would defeat our country's attempt to solve the unemployment question. If an employee were not in sympathy with a certain labor organization, he would be compelled to take his medicine or lose his job. This would defeat the right of an individual employee, or a small group of employees, from bargaining with the employer.

In conclusion, why should Congress enact this bill which would interrupt the peaceful relations which have existed between our employer and ourselves for years past. We are engaged in no difficulties with our employer and we look back over our years of service with pride in the fact that we have been able to fairly, successfully, and satisfactorily negotiate and collectively bargain with our employer. Such relationships in the Goodyear factory are threatened and individual rights vital to us and afforded us by the Constitution of our land are jeopardized.

We believe that the industrial-representation plan is a proper method of collective bargaining and that there is no just reason why it should be made impossible for us to continue it.

Senator WALSH. I have been asked to ask you some questions. Is the company paying your expenses?

Mr. TREMBLEY. The employees' activities committee, which is a committee made up of various clubs in the Goodyear Tire & Rubber Co., which numbers around 22 or 23, are paying our expenses to Washington at this time.

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Senator WALSH. Do they receive any funds from the company?

Mr. TREMBLEY. No; their funds are derived from various activities which they promote, such as baseball, football, basketball, dances, and so forth.

Senator WALSH. Have you your constitution with you?

Mr. TREMBLEY. I have, Mr. Chairman.

Senator WALSH. Will you leave it with the committee?

Mr. TREMBLEY. Yes, sir; I will.

Senator WALSH. What pay do you get or what allowances are you given as a representative of the organization of this company?

Mr. TREMBLEY. I am paid for the time I lose from my job when I am called off by an employee and when it is necessary to work a few extra hours I receive my average hourly earnings as a piece-worker in the plant.

Senator WALSH. Do you make any reports to the employees in the shop of your activities in their behalf as a representative of the workers?

Mr. TREMBLEY. All of the minutes of our meetings are posted on the bulletin boards or any information that the employees may wish.

Senator WALSH. That is the way they get the information?

Mr. TREMBLEY. Yes, sir.

Senator WALSH. Was there any meeting of the workers for the purpose of sending you here, or was it done by the board of representatives?

Mr. TREMBLEY. It was done by the Goodyear industrial assembly.

Senator WALSH. How many members in that assembly?

Mr. TREMBLEY. There are 60.

Senator WALSH. And are they somewhat similar to the organization which was described by the last witness?

Mr. TREMBLEY. No. I am the one that explained that.

Senator WALSH. Pardon me; all right, sir.

Mr. TREMBLEY. Mr. Chairman, I would just like to explain a little more fully if time will permit.

Senator WALSH. Certainly.

Mr. TREMBLEY. The employees whom we represent today are enjoying the benefits that have been made possible through the cooperation of the assembly with the management. I might state right here that the employees of the Goodyear Tire & Rubber Co. today are receiving an insurance to the extent of $33,000,000 in the Akron factories alone, which the premium is paid by the company alone. There are no charges to any of the Goodyear people.

We have a vacation plan. A man with 5 years of service receives 1 week vacation with pay. A man with 10 years of service receives 2 weeks' vacation with pay.

Senator WALSH. Who makes those payments?

Mr. TREMBLEY. The company pays it.

Senator WALSH. Was that a right or a privilege obtained through your organization?

Mr. TREMBLEY. It was in force before the organization was formed, but in the years 1931 and 1932 at the time of the depression, the company felt that it was quite an expenditure. It runs now a half a million dollars a year, and they were going to eliminate it, but through the efforts of the Goodyear industrial assembly, we were

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able to retain it and received it for that year and are receiving it now.

I might further explain that we have a pension plan whereby the company set aside 1 percent of the pay roll a year toward the pension fund to take care of employees who have come to the age of 65 years, who have become eligible under the pension plan.

Any employee who becomes disabled in the plant after 15 years of service, regardless of age, also comes in under the pension plan. At the present time the fund has been built up to the extent of $3,000,000.

We have a loan department where, if a man has an emergency that may arise, such as a death in the family or any emergency that may rise unforeseen and has no money, he goes to this department and he is able to negotiate for a loan which he pays off weekly, at no cost to him for the loan.

Senator WALSH. You mean there is no interest charge?

Mr. TREMBLEY. No interest charge whatever.

Senator WALSH. Do any of the other gentlemen accompanying you desire to be heard?

Mr. TREMBLEY. Mr. Chairman, I believe Mr. William Cash would like to say a few words.

Senator WALSH. Perhaps you had better wait, Mr. Cash, until we hear the other witnesses representing the opposite point of view.

Is Mr. House present?

Mr. HOUSE. Yes, sir.

Senator WALSH. Are you here alone or have you someone accompanying you?

Mr. HOUSE. I am here by myself.

STATEMENT OF JOHN D. HOUSE

Senator WALSH. Where do you reside?

Mr. HOUSE. Akron, Ohio.

Senator WALSH. Where are you employed?

Mr. HOUSE. By the Federal Labor Union, representing the Goodyear employees.

Senator WALSH. You are not an employee of the Goodyear Co.?

Mr. HOUSE. Not since January 15, 1934.

Senator WALSH. Perhaps you should talk after the other witnesses.

Mr. HOUSE. I will suit your convenience.

Senator WALSH. You may as well continue. Is it a unit of a local unit of the American Federation of Labor among the Goodyear employees?

Mr. HOUSE. Yes, sir.

Senator WALSH. And have they officers?

Mr. HOUSE. Yes, sir.

Senator WALSH. And you are one of those officers?

Mr. HOUSE. I am president of the local union.

Senator WALSH. But you do not happen to be an employee?

Mr. HOUSE. Not at this time.

Senator WALSH. Were you at one time?

Mr. HOUSE. Yes; for 9 years.

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Senator WALSH. How many of the employees of the Goodyear Co. are enrolled in your local?

Mr. HOUSE. Over 7,000.

Senator WALSH. And the total number of employees, as you understand, is how many?

Mr. HOUSE. Well, to explain that, I might refer to a vote that was taken of the production and maintenance employees some few days ago by the group just preceding me on the witness stand. The question to be determined by that vote was whether or not to lay off a certain number of employees and work 30 hours, or to cut the time generally into 24 hours and retain all the employees.

The CHAIRMAN. Which were these departments that were affected?

Mr. HOUSE. The maintenance and production employees. That takes in the mechanics, too.

The CHAIRMAN. And what else?

Mr. HOUSE. Production. That is excluding office workers.

The CHAIRMAN. The question arose among the employees in the maintenance and production departments as to whether it was better to drop a certain number of employees and continue those that the company was able to carry for a 30-hour week, or, as an alternative, to continue all of the employees and reduce the time for all to 24 hours; is that right?

Mr. HOUSE. That is so.

The CHAIRMAN. To whom was that question presented?

Mr. HOUSE. That question was presented—I don't know just where it originated, but I have my suspicions—but the thing was presented to the employees who are working in the shop.

The CHAIRMAN. In these two departments?

Mr. HOUSE. Throughout the factory. May I explain that? The production and maintenance employees cover the entire factory; that is, they are excluding the office workers.

The CHAIRMAN. Was there a vote taken?

Mr. HOUSE. There was.

The CHAIRMAN. Was it a secret ballot?

Mr. HOUSE. Yes, sir.

The CHAIRMAN. Where was it held?

Mr. HOUSE. Inside the shop. The workers on the job, wherever they were working, were contacted and asked to vote.

The CHAIRMAN. This vote was a vote that was taken by personal contact?

Mr. HOUSE. Yes, sir.

The CHAIRMAN. By you and some others?

Mr. HOUSE. No; by the representatives of the inside assembly.

The CHAIRMAN. Of these people [indicating].

Mr. HOUSE. Yes, sir.

The CHAIRMAN. So these representatives conducted this election or vote?

Mr. HOUSE. Yes, sir.

The CHAIRMAN. What was the result of that vote?

Mr. HOUSE. A total of 9,258, and as it was given to me, with 5,945 voting to reduce the hours, and 3,313 voting to work 30 hours.

The CHAIRMAN. Why did you not tell me about this, Mr. Trembley?

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Mr. TREMBLEY. I would like Mr. Cash to answer that question.

The CHAIRMAN. That vote was taken when?

Mr. HOUSE. I do not recall the exact date.

The CHAIRMAN. Within a few days or within a week?

Mr. HOUSE. Yes, sir.

The CHAIRMAN. As a result of that vote, what has been done by the management?

Mr. HOUSE. That would be hard to say.

The CHAIRMAN. You do not know? Was it announced in the press, in the local papers, at Akron, that this was the vote?

Mr. HOUSE. I did not see it myself; no.

The CHAIRMAN. As far as you know then, you are for the first time publicly announcing this vote?

Mr. HOUSE. Yes, sir.

The CHAIRMAN. Whether the management will accept it or not or what the representatives have done to take the matter up with the management, you do not know?

Mr. HOUSE. I do not know.

The CHAIRMAN. Or what plans are being worked out?

Mr. HOUSE. No, sir.

The CHAIRMAN. What has that to do with the number of members in your organization?

Mr. HOUSE. That would tend to show the number of workers who are eligible to join our organization.

The CHAIRMAN. You claim that the vote of about 9,200 would indicate the number of employees who are likely to be interested in the labor movement for the employees, and that you have enrolled 7,000, therefore you have more than a majority of the number of employees?

Mr. HOUSE. I might add, too, that this is the membership enrolled in the Federal Labor Union. We have other crafts in there who have a membership in various international unions. I believe there are 12 represented.

The CHAIRMAN. In other words, there are several local units applying to particular crafts?

Mr. HOUSE. That is right.

The CHAIRMAN. That are affiliated with national organizations?

Mr. HOUSE. Yes, sir.

The CHAIRMAN. And who I assume are submerged so far as collective bargaining is concerned iin the representative organizations?

Mr. HOUSE. Yes. We have what we call a "united rubber workers' council" which is composed of all crafts working in and around the rubber plant, through representative form of government in this council which claims jurisdiction of all the work done in and around the rubber plant.

The CHAIRMAN. How many members in that council?

Mr. HOUSE. There are the members of the executive board, and the delegates are elected by the component organizations, which covers the entire United States. I do not know the exact number.

The CHAIRMAN. How many of the board at this plant?

Mr. HOUSE. There are two members at this plant.

The CHAIRMAN. Is there any council of these employees who are organized in organizations other than the representative plan to which reference has been made?

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Mr. HOUSE. Yes.

The CHAIRMAN. How many members are there on that board and what do they represent?

Mr. HOUSE. The set-up is not complete yet because we have not been able to establish——

The CHAIRMAN (interposing). When did you start organizing a unit or local for the American Federation of Labor?

Mr. HOUSE. The first member signed up was on June 30, 1933, I believe.

The CHAIRMAN. And you have been working ever since then?

Mr. HOUSE. Yes, sir.

The CHAIRMAN. Have you had any meetings there?

Mr. HOUSE. We have regular meetings twice a month of the membership.

The CHAIRMAN. And you have elected officers, including yourself?

Mr. HOUSE. Yes, sir.

The CHAIRMAN. Have you attempted to do any collective bargaining?

Mr. HOUSE. Many times.

The CHAIRMAN. With the company?

Mr. HOUSE. Yes.

The CHAIRMAN. You yourself?

Mr. HOUSE. And a committee representing the unions.

The CHAIRMAN. Have you had a chance to confer with the management?

Mr. HOUSE. Yes, sir.

The CHAIRMAN. Did they receive your grievances?

Mr. HOUSE. They received them, yes; and kept them.

The CHAIRMAN. Have you been able to get results? You have not been able to, I assume?

Mr. HOUSE. That is right.

The CHAIRMAN. How many of these employees attend these meetings?

Mr. HOUSE. The numbers vary. Sometimes we only have a few that come to the meetings, and other times we have a full hall of upward of a thousand or fifteen hundred and as high as 2,000 has been at one meeting.

The CHAIRMAN. You have been given a regular charter, if that is what it is called, by the American Federation of Labor; is that so?

Mr. HOUSE. That is true.

The CHAIRMAN. And you are there on the ground actively performing the duties of your office as the representative of the American Federation of Labor local in this plant. Is there one being attempted to be organized at the other plant, the Goodrich?

Mr. HOUSE. There has been, concurrently with ours.

The CHAIRMAN. And are they having the same difficulty you are experiencing?

Mr. HOUSE. The same difficulties.

The CHAIRMAN. Is there anything else you wanted to say?

Mr. HOUSE. Yes. I have quite a lot I want to say if I have the time.

The CHAIRMAN. Have your members voted for a strike?

Mr. HOUSE. The date is set——

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The CHAIRMAN (interposing). Are they going to vote for a strike?

Mr. HOUSE. I do not know how they will vote. They will vote on the question next Sunday.

The CHAIRMAN. You have announced that the members of your organization will have an opportunity to vote on the question of a strike on Sunday of this week?

Mr. HOUSE. Yes, sir.

The CHAIRMAN. What is the issue that you are at variance with the company over?

Mr. HOUSE. The refusal of the company to recognize the union as a duly accredited agency.

The CHAIRMAN. It is not over this 24- or 30-hour plan?

Mr. HOUSE. No.

The CHAIRMAN. So you are going to strike because you have not been able to convince the employers of the company and they have declined to recognize your association for the purpose of collective bargaining?

Mr. HOUSE. I would not say——

The CHAIRMAN (interposing). Why has not this matter been called to the Labor Board?

Mr. HOUSE. It has.

The CHAIRMAN. Why have they not taken action?

Mr. HOUSE. For this reason: In the Goodrich and the Firestone cases, whose appeals preceded ours to the Board in this case, they spent a lot of money, the unions involved spent a lot of money going to hearings, financing their own witnesses and lawyers, and such, and they have obtained nothing, because the companies, in each case, have taken an appeal of the case to the circuit court, and it still remains before the court. They have been able to get no action. So the order, when it was issued by the National Labor Relations Board, the companies refused to accept that as final.

The CHAIRMAN. That is all in the case you referred to, Mr. Magruder?

Mr. MAGRUDER. Yes.

Mr. HOUSE. Another reason was that the application by the industrial assembly and the contention of the management was that the election should be held on company property.

The CHAIRMAN. Wait a minute and see if we have this record clear. In the case of the two competing companies with the Goodyear Co., there has been petitions to the Labor Board for elections for the purpose of determining who represents the employees for collective bargaining purposes with the employers. In those two cases elections have been ordered but appeals have been taken by the employers under the law, I assume, and there is consequent delay in holding the elections. Your organization, in view of the experience in the other two cases, and the delay, propose to determine whether they will have a strike or not rather than to go to the Labor Board and be subjected to delays and appeals that you think may result?

Mr. HOUSE. That is right. And that is why we are asking and pleading that the Wagner Labor Disputes Act be immediately enacted.

The CHAIRMAN. Now, let me see. In a situation like that, this bill would prevent these delays.

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Mr. HOUSE. Yes.

The CHAIRMAN. It is one of the features of the bill to eliminate the delays that have been experienced as a result of these two cases and other cases. Proceed.

Mr. HOUSE. I did not have the advantage that the other side has had in this, and I do not have a lawyer paid by the company to prepare a brief for me. I knew of their coming here only about 10 o'clock last night, and I only had half an hour to catch a train, so I immediately beat it to the train without a suitcase or anything, and I came to Washington in order to appear here. Through that fortuitous circumstance, I was able to make it, and through your benevolence I was able to appear before the board.

I have a few notes jotted down here. Although the statements may be rather disconnected, I think it will bring about clearly the things I want to say.

The CHAIRMAN. I understand you do favor this legislation?

Mr. HOUSE. I am in favor of it; yes, sir.

The CHAIRMAN. One of the reasons we have already developed. Are there any other reasons?

Mr. HOUSE. Another main reason would be that I am in favor of the bill and the organization which I represent and also I represent the feeling expressed by the other bona fide unions in the city of Akron and the district; we are in favor of the bill because it guarantees to the workers the right to choose freely and without interference from either source, and that it provides an adequate enforcement of the law which the Senate Resolution 44 obviously has not done. We fought for the bill in the Seventy-third Congress.

The CHAIRMAN. I assume that you have used no coercion in your efforts to obtain members in your organization or in any of these organizations?

Mr. HOUSE. That assumption is correct.

The CHAIRMAN. Of course, there is no law that can prevent you from discussing the matter amicably and peaceably with the workers there and presenting to them the merits of your organization and the demerits of theirs; nor is there in this bill anything to prevent an employer from discussing with his employees the merits and demerits of the various kinds of organizations.

Mr. HOUSE. Not that I know of.

The CHAIRMAN. I think that you would agree with me that it would be unfortunate, for instance, if an employer mistakenly but honestly believed that an organization was attempted to be formed among his employees that was un-American, and that he should be denied the right to state that, and show that to his individual men or even collectively. You agree with that, of course?

Mr. HOUSE. This is a free country.

The CHAIRMAN. So that all that you are asking for yourself, you are willing to give to the employer, in the matter of discussing amicably and peaceably the merits and the demerits of any particular organization?

Mr. HOUSE. Yes, sir.

Senator WALSH. When it comes to the question of coercion or interference, that is a different thing. We are now talking about influence. In this bill originally, the word "influence" was included, to prevent the employer using influence, and so forth, and we struck

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the word "influence" out, because we felt that an employer should not be prevented from exercising his influence for or against any particular organization that he thought detrimental to the welfare of his workingmen. Of course they would be left free to reject his advice and views and not to be interfered with if they did not choose to accept it. So that I understand you to say that all you have been doing is in a peaceable way, trying to argue it and persuade these employees that your organization is better than the one they have, for their own good.

Mr. HOUSE. That is true. The whole question would hinge on a definition of what constitutes interference.

The CHAIRMAN. That is a difficult situation. Coercion is more easily definable, but interference would not be, but I personally do not think that peaceably arguing for or against a particular course of action is interference. Do you?

Mr. HOUSE. Here is one thing where it might be interference. You must realize that a man working on a job for a company has an inherent fear of losing his job, so that when the employer takes a definite stand and advises its employees that he favors certain plans, their wills are corrupted because they fear unless they do as he wants them to do, they will lose their job, and without the protection of a bona fide labor union, they are powerless to protect themselves and are therefore fearful of losing their jobs if they incur the displeasure or ill will of the boss.

The CHAIRMAN. After this bill is enacted, if it is enacted, no employees can be discharged without an appeal to the Labor Board if he can prove that the reason for his dismissal is because he did not take the advice of his employer and because he chose some other organization different from the employer's, and that is one of the arguments made for the bill by its proponents, that it seeks to remove the economic pressure that the employer possesses by reason of his ability to discharge a man if their minds do not meet on a question of what form or character of organization they should join.

Mr. HOUSE. That same thing existed to a certain degree at least, in the Joint Resolution 44, but the difficulty is educating the workers.

The CHAIRMAN. There was no definition in that of what is called "unfair practices." I am afraid I am taking up too much of your time and my own time in discussing this. You may proceed.

Mr. HOUSE. What I started to say there was that the workers themselves sometimes do not have faith enough in the Government boards; that is, they are afraid that the manufacturers themselves will be able to evade the law through some legal step, therefore, without strong organizations behind them, they will, rather than take their case to the courts and risk the chances of losing it and thereafter being discharged, they will accept things as they are without comment.

I have stated some reasons why we favor the enactment of the bill, and I will give some further reasons.

The Industrial Assembly, which the members that preceded me represent, was instituted shortly after a strike of machinists in 1919. The machinists' strike threatened to tie up the productive operations of the plant. Shortly after that, the plan was put into effect.

I have affidavits here before me to show that it was never submitted to a vote of the employees; that is, they never voted directly on

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whether or not the plan was acceptable to them, and no other substitute was offered to them. It was either "take it or leave it."

I have affidavits to show also that coercion was used, intimidation and interference, inasmuch as foremen went around and told them unless they voted for someone to represent them under the plan, that they might incur the ill will and displeasure of Mr. Litchfield, who conceived the plan himself and put it in operation.

In 1926, after the plan went into effect and was working for some 7 years——

The CHAIRMAN (interposing). I assume that one employee could do that after this law is passed, that one employee could go to another and say, "now, John, you should not join this organization, our bosses won't like it and it will be unpleasant, and I cannot urge that too strongly." On the other hand, an employee can go to another employee and say, "John, this union is not free to represent you and fight for your rights, and you want to belong to this other union."

Mr. HOUSE. That would be possible.

Senator WALSH. I do not suppose there would be any violation of the law under this bill. If the employee himself or a foreman or superintendent or someone to whom it could be traced that he was directing this propaganda, it might be construed as interference.

Mr. HOUSE. That is what I would say would be interference. Let the employees choose freely.

The CHAIRMAN. I think you will agree with me that any fellow employee would have as much right to argue against your union as much as you would have a right to argue in favor of the merits of your union.

Mr. HOUSE. That is true. In 1926, after the plan had been in operation for a period of over 7 years, about 5,000 Goodyear employees joined an outside union.

The CHAIRMAN. This was in 1926, you say?

Mr. HOUSE. This was in 1926. That was under threat of discharge which finally did come to many of them, the most active workers in the organization, after the organization was broken up through the underhanded methods, spy systems, and so forth, which were employed at that time by the manufacturers.

The assembly is not a collective-bargaining agency. It is impossible for it to bargain collectively, which I can show through referring you to the decision handed down by the National Labor Relations Board in the case of Goodrich and Firestone, which organizations are similar in most details. That is to say, that the assembly as my predecessor here has stated, it passes a bill, but it must go then to the factory manager for his O. K. before it becomes a law, as a rule, in the shop. If he vetoes it, it must be passed over his veto by a two-thirds vote of both the house and the senate, and each vote must be an aye and no vote, and the way the man voted is to be recorded and spread in the minutes.

The CHAIRMAN. Does it then become a rule or regulation?

Mr. HOUSE. No; it does not then.

The CHAIRMAN. If the representative group and the senatorial group pass a resolution asking that the working hours be reduced from 8 to 7½, and it goes to the management and the management

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vetoes it, then if the representative passes it by two-thirds and the Senate passes it by two-thirds, what happens then?

Mr. HOUSE. It goes up the line. The board of directors holds the last word.

The CHAIRMAN. The only thing left then is to strike, of course, if the men insist.

Mr. HOUSE. There is something rather curious, rather humorous in it.

The CHAIRMAN. I do not see why it is necessary to go through those stages of a two-thirds vote.

Mr. HOUSE. That is provided for in the plan.

The CHAIRMAN. Unless the two-thirds vote would emphasize to the management the determination on the part of the men and give them a chance to see that the men were in deadly earnest, is that right?

Mr. HOUSE. That might possibly be the operation. Of course it is said that they can now appeal to the National Labor Relations Board, but that is not so in the matter of wages and hours, because the jurisdiction of that board is only on questions of discrimination, as I understand it.

They are powerless to pass any bill which, as I say, the company does not favor. I would like to point out that the men cannot be courageous, having no organization backing, to pass a bill over the president's veto, certainly where it must be that his vote is so recorded, and the management would know exactly how he voted.

The CHAIRMAN. You make that argument as indicating the limitations upon real collective bargaining and choice under this system?

Mr. HOUSE. That is right. They never call meetings of the employees. The question of the hours, a few days ago, was the first time in my experience with the plant that such a vote was taken on any question. The total vote cast was 9,258, as I said, and more than 7,000 have at one time or another been members of the Federal Labor Union and besides those who have joined the various craft organizations.

The CHAIRMAN. Now, young man, you impress me as being very fair-minded and sincere and in earnest in the advancement of the organizations that you represent. Why is not the sensible thing for you to do—pardon me for giving this advice—to ask your men not to strike now, but to petition this labor board for an election. You will have the same delays undoubtedly that the others have had, but you will finally get a decision. If you do not get it in the courts, you may get it through this appeal. If a majority of those workers want the organization that you represent, they are going to have it sooner or later. It may be postponing or delaying the matter, and it seems to me that that would be the better course for you to pursue rather to have at this time these men put to the trouble and expense of being out of work. I know that it is a good deal to ask. On the other side, you may not be able to control the situation and control the spirit of these men.

Let me first ask Mr. Magruder: What is the legal objection being raised by the companies to the order of the Labor Board?

Mr. MAGRUDER. Senator, they attack the constitutionality of Senate resolution 44 as beyond the power of Congress as applied to

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regulating labor relationships in manufacturing, which they say is not interstate commerce.

The CHAIRMAN. In other words, they raise the question that no Federal law can attempt to regulate the relationship between the employer and employee in the production plants?

Mr. MAGRUDER. Yes; that is their fundamental contention. They also raised a question whether the "public interest" requires an election, as the statute reads. That phrase has not been interpreted by the courts yet.

The CHAIRMAN. It is certain that there is in this case and it is almost true in the other, what we would call the possibilities of a strike, the threat of a strike.

Mr. HOUSE. I have not any doubt about it myself. They are fighting it all along the line.

Senator WALSH. I submit that, young man, to you. Perhaps I am trespassing beyond my prerogatives in even making a statement to you, but it is made with the best of intentions and I am sure that you will probably consider that. Of course, it is possible that you may not be able to get the majority in the election now and in time you would.

Mr. HOUSE. Along that line, we have been 18 months trying to keep down a strike and wait upon the boards. We have waited through the Goodrich and Firestone cases, which are almost analogous, and the same principles and laws would apply.

Senator WALSH. But could not those cases be heard for a decision?

Mr. MAGRUDER. They will be up for argument in April, I think, before the Circuit Court of Appeals.

The CHAIRMAN. Is there an appeal then to the Supreme Court of the United States?

Mr. MAGRUDER. Yes.

Mr. HOUSE. Then, understanding the attitude of the management, the only thing, when the question was brought up of an election now, the management was asked if they would agree to negotiate an agreement to a final conclusion with the group that might be successful in an election held under the auspices of the National Labor Relations Board. They still wanted it on the company property, and there was a statement made by Mr. Slusser, the vice president and general manager of the company, that he would not let a dog of his go to the armory to vote. They maintain that the election should be held on the company property, which we maintain is not fair and right. It should be held on neutral property and give everyone an opportunity to freely express his choice. That is all we ask for.

Then, too, is the advantage of the assembly, the financial support given by the company. I would like to enlarge upon that just a little. The financial support given to the representatives in the industrial assembly—a little history there might clarify the situation.

In 1933, in July, the Budget allowance for members of this industrial assembly representatives and senators was 25 hours per month. That time could be used during working hours or after working hours—it did not matter. And there is extra time allotted for committee work.

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At that time we began to organize a bona fide labor union outside, and by the fall of 1933 this budget allowance had been raised to 45 hours per month, with the extra time allowed for committee work.

Some time later, in the early part of 1934, when the organization was at its peak, the outside labor organization was at its peak; that is, in paid-up membership; that limit was almost, you might say, taken off. That is, unlimited time was given to any persons purporting to represent employees through the plan. That continued up until recently, when the edict came down from the management that they would have to adhere strictly to their budgetary allowances, that is, the 50 hours per month of straight assembly work besides their other committee work.

That is a corrupting influence which would be done away with by the Wagner labor-dispute bill.

I would like to read from a decision just a few lines. Before doing that there is one statement I would like to make. It has been said that the collective bargaining or freedom of contract——

The CHAIRMAN (interposing). Will you let us have the decision to be printed in the record instead of your reading it?

Mr. HOUSE. I was not going to read the entire thing. I just wanted to point out a few salient features only. Freedom of contract is possible only where there is equality of bargaining power, which evidently is not so in regard to the assembly plan.

There are some excerpts from the Firestone and Goodrich decisions—statements that I want to read.

The CHAIRMAN. That may all go in the record.

Mr. HOUSE. Yes, sir. In referring to the Firestone plan, they said:

> The plan as we read it is better adapted to the handling of hours and basic working conditions affecting the plant as a whole. Significant in this connection is the fact that the plan does not provide for general meetings of employees, as in a union local, nor even for regular meetings of the whole body of representatives, which factors, if included in the plan, would obviously afford a ready means for the formulation of the collective wishes of employees which are essentially preliminary to the process of collective bargaining.

And then they say further:

> As we have intimated, the company's conduct with reference to the creation and operating of the employees' conference plan, may be an interference with the rights of self-organization under section 7–a. If after the election, the company maintains its practice of contributing to the financial support of the plan, whether or not the plan represents the suffrage of the majority, such action might be held to constitute a continuing interference.

That was in the Firestone case.

In the Goodrich case they said:

> The plan is not a membership organization, but rather is a method which may be used by the employees to bring grievances to the management for consideration.

Collective bargaining is more than the handling of grievances, as we all know.

> Amendment of the plan is not possible without the consent of the company, because it is provided that proposed amendments must run the gauntlet of two joint committees composed in equal numbers of representatives of management and employees, before they receive the final sanction of the elected representatives of employees from the various departments or divisions. No referendum as to the body of employees is provided in such cases.

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And later along they say:

> It is clear that the company has actively participated in the drafting, adoption and financing of the Goodrich cooperative plan, that the plan has never been put to a vote of the employees for acceptance or rejection; that the employees have never had an opportunity of voting on whether they desire to be represented as provided in the plan or by the local outside union—

or words to that effect.

One other quotation from the decision. In speaking of the feature of the plan that paid the salaries to employer representatives, it says:

> At this juncture, we believe that the company interfered with the self-organization of its employees when it threw the great weight of its financial support in favor of the group of employees who wanted a plant organization. The tendency of the thing at the time of the inauguration of the plan was corrupting and the continuance of financial support by the company at the present time is corrupting. This is particularly true of the payment of salaries to representatives. However single-minded these elected representatives under the plan might be in their devotion to the interests of the employees, the provision for paying extra salaries to the approximately 150 employees representatives causes their independence of employer domination to be highly dubious.

Those are the words of the National Labor Relations Board, and they are significant. The passage of the Wagner labor dispute bill will do away with a condition of that sort; it will enable the workers themselves to choose freely as to the organization that might represent them.

This does not preclude independent organizations or the company union. It does not preclude the company union. The employees might elect to be represented by an independent group composed entirely of employees of their own manufacturing establishment, but lacking the great weight of the financial support of the company behind them, they would be on an equal footing, even though if an outside organization from that standpoint that is one affiliated with the American Federation of Labor. in getting membership into their organization.

We have in Akron an independent organization started. They are not very successful in getting memberships.

The CHAIRMAN. That is a local independent apart from the American Federation of Labor?

Mr. HOUSE. Yes, sir. But neither is it dominated by the company. There was a feeling among the workers that the American Federation of Labor was too conservative and reactionary. That is, they want direct action. It is a form of communism, communistic tendencies that cause these workers to desert the ranks of the more conservative element and to go to the independent union, the vertical independent union. Lacking the financial support of the company, the employees then would be given the choice as to which of the two organizations they wanted to belong to. Of course, it would naturally result in the workers belonging to an organization that in itself would be more capable of protecting their interest.

It does not preclude that there will be closed shops. That is as we all know, brought about through agreements between the men and the management. It merely gives employees an opportunity to choose freely without the corrupting influence of paternalistic employers, who will prey upon the most gullible type of worker, promise him promotion and extra pay, and threaten workers with the

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withdrawal of certain privileges enjoyed by them at present, given them as a sort of opiate or palliative to soothe their injuries. That will do away with that.

Of course, a bona fide labor organization, out from under the domination of the boss, does not say that there will always be strikes. The workers now are better educated than they were years ago. They understand the problems of management better than they did years ago, so that it is only fair to assume that should the employers deal fairly with the men, that that would insure that they would deal fairly to, and would be more inclined to deal fairly with them unless they were goaded to some radical action by the tactics of some unfair employer.

I think that the employers oppose the bill because they want to be able to maintain their despotic control of workers through the control of company unions. The only reason why the company unions oppose the bill is that it would prevent them from spying on their fellow workers openly in the guise of representing them in the presentation of their grievances and get paid for it by their employer, instead of having to operate under cover.

I have a clipping here from the Akron Times-Press, of the statement made by the vice president and general manager of the Goodyear Tire & Rubber Co., referring to the statement made by President Green before this committee, I think. Regarding the hiring of paid spies, by the company, he made this statement. I will file it with my testimony, and that statement was made in the presence of reporters from the Beacon Journal and the Press. The Press carried it as an item in quotation marks.

Another note that I have here is the mystery of the employers when a labor question comes up, which is highly amusing to those who understand the principles of organized labor and the psychology of a worker in a labor organization and their reaction to the attempt of their labor organizers to stampede them or of employers to sully them or keep them in meek submission.

Workers are not so ignorant of the problems of management as they were, and unless goaded by unfair tactics of employers through radical action, they are more than willing to cooperate with the management. I think that has been proven on many occasions.

Speaking of the benefits that have been obtained by the company's union in Akron during 1933 and 1934 or since the organizing started in Akron, the American Federation of Labor affiliates have signed 200 closed-shop agreements, signed with manufacturers and employers in that district, Greater Akron. Over 2,000 verbal and written agreements covering wages, hours, and working conditions, raising wages in some instances and as much as $40 per month per person. That accounts in great measure for the $21,000,000 increase in the pay rolls in Greater Akron during the year 1934.

The CHAIRMAN. Are these agreements with competitive organizations?

Mr. HOUSE. Yes.

The CHAIRMAN. None with this organization?

Mr. HOUSE. No.

The CHAIRMAN. But industrial organizations that perform the same function?

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Mr. HOUSE. There is one closed-shop agreement with a rubber-manufacturing concern in Greater Akron. That is in a suburb of Akron, the India Tire & Rubber Co., which has a closed-shop agreement, even using the union label. That is the only rubber shop in competition with the three large major shops, and of course they do not compete much with them.

In the organized shops, there is too great a disparity in wages paid to the different classes of workers. The building-service employees representatives a short time ago made the statement that their membership was being discriminated against. The same is true in our locality. A member in the building service averages around 50 cents an hour.

I have affidavits here to show that the company does interfere with the rights of self-organization in the plant. They show coercion and intimidation.

The CHAIRMAN. Do you want those put in the record, or would you rather not have them in the record?

Mr. HOUSE. I think it is just as well to keep them out of the record except as I may comment upon them if I may.

The CHAIRMAN. You can put them into the record without the names.

Mr. HOUSE. The stenographer is taking down what I am saying, is he not? So that is all I care to say is what should go in.

There is an affidavit here which shows that in a certain department in the Goodyear Tire & Rubber Co. when they reported such a high vote in the industrial assembly plan, that a certain foreman got up on a table—he wrote a notice first on the bulletin board that he wanted to see and talk to all of the employees in that department at a certain hour. That was at 12 o'clock noon. At 12 o'clock noon, when the shift changed, the first shift going out and the second shift coming in, all of the employees in both shifts gathered around that table in the department. The foreman arose on the table and addressed them and told them what a good fellow he had been to them and all through the preceding years, and he said that he intended to continue in that way and in that spirit, but that it would be a great personal favor to him if they would go ahead and vote, take an active part in the company union.

We in the outside union passed a resolution that no member of our union should take active part in the industrial assembly, feeling that that was the greatest curse to workers—a company-dominated union was the greatest curse that the workers ever had foisted upon them. So that we passed a resolution that our membership would not be allowed to participate and take active part. Some of them construed that to mean that they could not vote in the industrial assembly elections, and the company seemed to take the same attitude, because they went around and asked them to vote.

This man got up on a table and addressed them just as at a meeting, that he would consider it a personal favor if they were to go and vote. That was on the day preceding the date of the election. It happened at that time they were rotating, that is, during slack production they would rotate one day; a certain group would stay off 1 day and the other group would work. They were getting perhaps 4 days per week per person, but still the plant was operating 5 days a week. That day the polls were brought in by the assembly.

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The CHAIRMAN. I have given you a good deal of time, Mr. House.

Mr. HOUSE. I am sorry if I have imposed upon your good nature.

The CHAIRMAN. I have some other witnesses that must be heard tonight.

Mr. HOUSE. I will conclude, then, very shortly. I would just like to say that our organization has voted upon this. They did not tell me to come down here. I am acting in the capacity representing the United Workers Federal Labor Union, having a large membership employed by the Goodyear Tire & Rubber Co. We fought for the bill, passed resolutions in favor of the bill during the Seventy-third Congress, and sent them in. A record was made of our last resolution, I think it was on March 5 of this year, that we sent the resolution in to the Senate, the Speaker of the House, and the President of the Senate in favor of this bill, so that I am carrying out the orders of my members.

(As directed by the chairman, the following National Relations Labor Board decisions are incorporated in the record in connection with the testimony of Mr. House.)

National Labor Relations Board 208. In the matter of Firestone Tire & Rubber Co. employees conference plan and United Rubber Workers Federal Labor Union, Local No. 18321. Case No. 156. Hearing, October 19, 1934; decision, November 20, 1934.

The Firestone Tire & Rubber Co., of Akron, Ohio, is a corporation organized under the laws of Ohio. It manufactures tires and other rubber products, obtaining its raw materials, such as rubber and cotton, from the Far East and other points beyond the borders of Ohio. The finished products are sold and shipped all over the United States by a wholly owned subsidiary corporation organized under the laws of West Virginia, which is known as the Firestone Tire & Rubber Co. of West Virginia and which has sales agencies throughout the United States. Some of the officers of the West Virginia corporation are likewise officers of the parent corporation in Ohio, and the sales manager of the West Virginia corporation has his office in the same building with the Ohio corporation. All of the officers of the West Virginia corporation are residents of Ohio. There is a wholly owned subsidiary of the Ohio corporation located in California known as the Firestone Tire & Rubber Co. of California, and another subsidiary in Liberia, which has a plantation there. The company signed the President's reemployment agreement, effective August 1, 1933, and since December 1933 has been subject to the rubber manufacturing industry code and the rubber tire manufacturing industry code. On September 1, 1934, the company employed 10,552 factory and office employees, of which number 9,048 were factory-clock employees.

United Rubber Workers Federal Labor Union, Local No. 18321, which obtained its charter from the American Federation of Labor on July 25, 1933, and which is composed wholly of employees in the Firestone plant, has petitioned the Board to order an election to determine by what person, persons, or organization the employees of the Firestone Tire & Rubber Co. desire to be represented for the purpose of collective bargaining. Local 18321, and its affiliated craft locals, are members of the United Rubber Workers Council, affiliated with the American Federation of Labor. A motion was made at the hearings before the regional board, on September 26, 1934, for an order declaring the employees' conference plan illegal because of the alleged interference, coercion, and intimidation by the company in the organization and continuance of the plan; and included in the motion was a request that the company be required to desist from financial support of the plan. At the hearing before us on October 19, 1934, some further evidence was introduced and argument was held on the record.

Shortly after local no. 18321 was organized, a so-called "employees' conference plan" became operative in the Firestone plants on September 21, 1933. This plan is not a membership organization but rather is a method which may be used by the employees to present their grievances to the management

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for consideration. The professed purpose of the plan, as stated in the constitution, is to promote a spirit of cooperating and mutual understanding between all persons engaged in the operation of the plant. The company contends that the plan was instigated and developed by the employees themselves, while local no. 18321 contends that the plan was sponsored by the management to interfere with its development.

It is clear that the company cooperated in and encouraged the formulation of the plan and to some extent supervised the details of its organization. The management conducted an election among the employees for the selection of representatives from the various departments to draft a plan. These elected representatives named from their group a drafting committee, which, with the aid of the management representatives, drafted a plan. This plan, having been approved by the management representatives as well as by the employee representatives, was forthwith put into operation as the employees' conference plan, without any vote of ratification by the general body of employees.

The Firestone Tire & Rubber Co. owns a number of adjacent plants in Akron. Each plant is divided into departments. The employees' conference plan, as finally adopted, provides for an employees' committee, departmental conference committees, and a senior conference committee. The employees' committee consists of representatives nominated and elected by the employees from the various company departments. Each elected committeeman represents approximately 100 employees. The purpose of the employees' committee is "to present and discuss such matters as wages, working conditions, working hours, seniority, health, safety, and any such other and similar matters as may pertain to the general welfare of the employees." The elected committeemen also serve on their respective departmental and plant conference committees. The plan provides further that the management shall group the departments into divisions. The elected committeemen from each division then elect one of their number to the senior conference committee. Each member of the senior conference committee represents approximately 500 employees.

An employee who desires to submit a problem to the employees' conference plan must refer that problem through the following steps, in consecutive order, until satisfactory action results: (1) Employee to foreman, (2) employee to committeeman or department manager, (3) committeeman to foreman or department manager or departmental conference, (4) department manager or committeeman to labor department, (5) department manager or committeeman or labor department to plant conference committee, (6) plant conference committee to senior conference committee.

In a case where the matter has been submitted to the senior conference committee and that committee is unable to agree with the management, it may be submitted to a board of arbitration for final decision.

Aside from a provision that employee representatives shall receive their full pay during the time devoted to representation work, there is no provision in the plan itself for financial support by the company. The evidence disclosed, however, that the company is paying the current operating expenses of the plan.

Under the prescribed procedure for amendment of the plan, no changes can be made in it without the consent of the management.

It is clear that the company has actively participated in the drafting, adoption, and financing of the employees' conference plan; that the plan has never been put to a vote of the employees for acceptance or rejection; that the employees have never had an opportunity of voting on whether they wanted to be represented as provided in the plan or by local 18321, of which a large number of Firestone employees are members.

The employees as a body have voted on the selection of the drafting committee as aforesaid and at the election conducted under the terms of the plan. The employees would naturally want to participate in the selection of the representatives chosen under the plan, because it is in fact the collective-bargaining agency now recognized by the company. Hence, the fact that three-fourths of the employees participated in the annual elections in October 1934 affords no sufficient basis for inferring that they liked the plan or would choose it as against other alternatives. Furthermore, even though no overt threats have been made by responsible officials, employees would quite understandably be reluctant to render themselves conspicuous by refusing to participate in the election, in view of the fact that the company is known to be strongly supporting the plan.

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Notwithstanding the foregoing, it is claimed for the plan that it has the support of a majority of the Firestone employees. On the other hand, union officials have testified that local no. 18321 has as members over 6,000 employees of the Firestone Co.; and on the basis of such asserted membership it is claimed that a majority of the employees would choose to be represented by the United Rubber Workers Council.

The company argues that the public interest does not require an election here, because conditions are peaceful at the plant, and the campaigning incidental to an election will only serve to create disturbances among the employees.

But the requirements of public interest do not limit us to ordering elections only in cases where disorder exists or where there have been threats of a strike. The basic purpose of Congress in providing for elections was to facilitate the free exercise by the employees of their right of self-organization for collective bargaining. When we find in existence a plant organization or company union whose claims to be the choice of the employees for collective bargaining are open to serious challenge, as in this case, the very existence of such a substantial controversy is likely to lead to strife and discord if the wishes of the employees are not ascertained by an impartial agency. We think the present case is one in which a secret election conducted by us would fulfill the purposes of Congress as disclosed in section 7 (a) and in Public Resolution 44, Seventy-third Congress.

We consider now the appropriate form of ballot and other matters connected with the election.

The motion by local no. 18321 that the employees' conference plan be declared illegal we interpret as a request that it be excluded from a place on the ballot. Since the election is to determine a choice of representatives for collective bargaining, we may, in extreme cases, be justified in refusing a place on the ballot to an organization or plan of representation which by its very terms is incapable of serving as a collective-bargaining agency. This, however, we should rarely have occasion to do, since ordinarily the choice, good or bad, is for the employees to make. The plan, as we read it, is better adapted to the handling of individual grievances than it is for collective bargaining on matters of wages, hours, and basic working conditions affecting the plant as a whole.

Significant in this connection is the fact that the plan does not provide for general meetings of employees, as in a union local nor even for regular meetings of the whole body of representatives, which factors, if included in the plan would obviously afford a ready means for the formulation of the collective wishes of employees which are an essential preliminary to the process of collective bargaining. Nevertheless, collective bargaining is not impossible under the plan, and hence, so far as this point is concerned, there is no sufficient reason for excluding the plan from a place on the ballot. Insofar as the company's conduct in assisting and supporting the organization of the plan is concerned, even though that conduct may have been an improper interference with self-organization under section 7 (a), a secret election held under our auspices can remedy the wrong already done, as we held in the *Kohler case*. The constitution of the plan itself does not prescribe that the company shall pay the operating expenses and hence the fact that the company had made a practice of doing so in the past is not in itself a sufficient reason for keeping the plan off the ballot.

As we have intimated, the company's conduct with reference to the creation and operating of the employees' conference plan may be an interference with the rights of self-organization under section 7 (a). If after the election the company maintains its practice of contribution to the financial support of the plan, whether or not the plan represents the suffrage of the majority, such action might be held to constitute a continuing interference. But the petition addressed to us was simply a request for an election; the notice of hearing before the regional board so defined the issue.

Likewise, the notice of hearing before the National Labor Relations Board informed the company that it was "for the purpose of determining whether in the public interest an election should be held of the employees of the Firestone Tire & Rubber Co. to determine by what person, persons, or organization they desire to be represented for the purpose of collective bargaining as defined in section 7 (a) of the N. R. A." It is true that at the end of the hearing before the regional board a motion was made to declare the plan illegal because of the company's alleged interference with self-organization,

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and in the briefs submitted to us, as well as the oral argument before us, this matter was debated by counsel. Nevertheless, in view of the announced scope of the hearing, it may fairly be contended that the company was not put on notice that its "blue eagle" was in jeopardy. The allegations as to the illegality of the employees' conference plan were incidental to the election petition and might have been directed toward the question whether the plan should be accorded a place on the ballot. Therefore, in this proceeding we refrain from any decision respecting the company's alleged illegal activity in contributing to the financial support of the plan.

There have been 1,000 employees laid off in recent months. It was testified on behalf of the company that the large number of men laid off were laid off during the last 2 or 3 months. It was testified further that they were not laid off because of a seasonal decline in business, but rather because of an abnormal reduction in the amount of their business. It is to be expected that when business improves, at least some of these employees will be called back to work. If we select as the date for determining eligibility to vote the date on which the petition for election was received, September 7, 1934, we shall thereby include a considerable part of the employees now laid off but who are expected to be called back to work as business improves. We therefore hold that all of the production and maintenance employees on the company pay roll on September 7, 1934, and, in addition, all production and maintenance employees who have been added to the pay roll in the period from September 7 to 2 days before the date of the election, and are still on the pay roll of the company 2 days before the date of election, shall be eligible to vote in the election.

FINDINGS OF FACT

1. The Firestone Tire & Rubber Co. signed the President's Reemployment Agreement effective August 1, 1933, and has been subject to the Rubber Manufacturing Industry Code and the Rubber Tire Manufacturing Industry Code since December 1933. The company manufactures tires and other rubber products and through wholly owned subsidiaries sells and ships its finished products all over the world. It employs approximately 10,552 factory and office employees of which number 9,048 are factory-clock employees.

2. The Firestone Tire & Rubber Co. is a corporation having its general offices and manufacturing plant at Akron, Ohio, and through a wholly owned subsidiary corporation organized under the laws of West Virginia has sales and service agencies in Ohio and other States. The company engages in interstate commerce, obtaining raw materials from States other than Ohio and shipping and selling its finished products all over the world through sales agencies.

3. The United Rubber Workers Federal Labor Union Local No. 18321 for employees of the Firestone Tire & Rubber Co. obtained its charter from the American Federation of Labor on July 25, 1933, and, according to testimony before us, has more than 6,000 members. Local 18321, and its affiliated craft locals, are members of the United Rubber Workers Council affiliated with the American Federation of Labor.

4. On September 21, 1933, the employees conference plan became operative within the Firestone Tire & Rubber Co. The plan was drafted by representatives elected by the employees with the assistance and cooperation of the management. It was approved by the elected representatives of the employees and the management representatives and put into effect without any further ratification by the general body of employees. Its expenses are paid by the company.

5. There are conflicting claims on behalf of employees conference plan and United Rubber Workers Council as to who represents a majority of the workers of the Firestone Tire & Rubber Co. for the purpose of collective bargaining. The employees have not had an opportunity to vote on acceptance or rejection of the employees conference plan nor have they had an opportunity to vote on the alternatives of the plan and United Rubber Workers Council.

6. Continuance of the present uncertain situation is conducive to discord among the employees.

7. Approximately 1,000 workers have been laid off during the last few months because of an abnormal decline in business. Local 18321 made application to the regional labor board, eighth district, for an election on September 7, 1934.

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CONCLUSION

It is the conclusion of this Board that it is in the public interest that an election by secret ballot of the production and maintenance employees of the Firestone Tire & Rubber Co. should be had to determine whether they desire to be represented by the employees' conference plan or by the United Rubber Workers Council for the purpose of collective bargaining as defined in section 7 (a) of the National Industrial Recovery Act and incorporated in Public Resolution 44 of the Seventy-third Congress.

ORDER FOR ELECTION

This proceeding having been duly heard by the National Labor Relations Board on October 19, 1934, upon petition of the United Rubber Workers Federal Labor Union, Local No. 18231, and upon testimony and evidence received at Cleveland, Ohio, on September 26 and October 1, 1934, and thereafter at Washington, D. C., this Board having herewith made its decision, its findings of fact, and its conclusion that it appears to be in the public interest to so order: Now, therefore, it is

Ordered that within a period of 3 weeks from the date of this decision, and between such hours and at such place as the director of the regional labor board for the eighth district may determine, having in view the making of the necessary mechanical arrangements, there shall be held, under the supervision of a representative of the National Labor Relations Board, an election by secret ballot of the production and maintenance employees of the Firestone Tire & Rubber Co. who were on the company pay roll on September 7, 1934, and in addition all production and maintenance employees who have been added to the pay roll in the period from September 7 to 2 days before the date of the election and are still on the pay roll of the company 2 days before the date of the election, to determine whether they desire to be represented by the employees' conference plan or by the United Rubber Workers Council for the purpose of collective bargaining as defined in section 7 (a) of the National Industrial Recovery Act and incorporated in Public Resolution 44 of the Seventy-third Congress.

Ordered further, for the purpose of determining the eligibility of employees to vote, that 2 days before the date of election the Firestone Tire & Rubber Co. shall submit to the director of the regional labor board, eighth district, as representative of the National Labor Relations Board, it pay-roll lists showing the names of all its production and maintenance employees who were on its pay roll on September 7, 1934, and all its production and maintenance employees hired since September 7, 1934, and who are on its pay roll 2 days before the date of election.

NATIONAL LABOR RELATIONS BOARD,
H. A. MILLIS.
EDWIN S. SMITH.

National Labor Relations Board (209). In the matter of B. F. Goodrich Co., Goodrich Cooperative Plan, and the United Rubber Workers Federal Labor Union, Local 18319. Case 155. Hearing, Oct. 18, 1934; decision, Nov. 20, 1934.

The B. F. Goodrich Co. manufactures rubber products which, through sales agencies, are sold and shipped all over the world. It maintains sales agencies, service agencies, and plants in States other than Ohio, and obtains raw materials from points outside of the borders of Ohio. The company signed the President's reemployment agreement effective August 1, 1933, and since December 1933 has been subject to the Rubber Manufacturing Industry Code and the Rubber Tire Manufactoring Industry Code. There are approximately 15,000 employees within the plant at Akron, made up of about 12,000 production and maintenance employees, 2,000 clerical employees, and 859 to 900 supervisory employees.

The United Rubber Workers Federal Labor Union Local No. 18319, which obtained its charter from the American Federation of Labor on August 6, 1933, has petitioned the National Labor Relations Board to order an election to determine by what person, persons, or organization the employees of the B. F. Goodrich Co., of Akron, Ohio, want to be represented for the purpose of collective bargaining. Local No. 18319 and its affiliated craft locals are members of the United Rubber Workers Council affiliated with the American Federation of Labor.

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Shortly after Local No. 18319 was organized the company began to concern itself with employee representation for collective bargaining purposes. The management instituted a survey to find out what sort of plan would be acceptable to the employees, and thereafter at the request of a number of employees, arrangements were made to have the various departments within the plant elect representatives to a drafting committee. These elected representatives named a smaller committee which in cooperation with representatives of the management drafted a plan. This plan was then approved by the management as well as by the elected representatives of the employees, and went into operation in October 1933, as the Goodrich Cooperative Plan.

The plan is not a membership organization, but rather is a method which may be used by the employees to bring grievances to the management for consideration. It has for its professed purposes the promotion of closer relations between employees and management and the provision of a means whereby employees shall have representation for collective bargaining. The plan provides for the annual nomination and election by the employees of representatives from the various divisions of the company to serve upon a general committee. The representatives of the employees on the general committee elect officers and also elect a chairman and four members of a wage committee and a chairman and four members of a welfare committee. The management has one representative on each of the two committees. The plan further provides for a joint committee to be composed of the president of the general committee of representatives, the chairman of the wage committee, the chairman of the welfare committee, and three members appointed by the management. There is also an appellate council make up of an equal number of employee and management representatives. Individual problems may be taken by the employee to his immediate superior, then to his representative, then to other superiors up to the general foreman. If the matter is not settled in these preliminary stages, it can be taken through the committees of the cooperative plan to the appellate council and finally to the president of the company and the board of directors.

Group problems follow a similar procedure, except that they may be presented in writing directly to the elected representative of the department or division, who arranges a meeting, if so requested, between 1, 2, or 3 spokesmen of the employees concerned and the foreman, general foreman, or other proper official. If the problem is not settled at this stage, it can be taken up through the cooperative plan committee until it finally reaches the company's board of directors.

Provision is also made for compensation of the 150 employee representatives who serve pursuant to the terms of the plan. Each representative receives $15 a month, in addition to 75 cents an hour for time spent for regular committee meetings necessitating absence from work. The president of the general committee receives $30 a month, and the chairman of the welfare and wage committees each receive $25 a month. These salaries, paid by the company, are in addition to the regular earnings of the employees. Although not provided for in the plan itself, the record shows that the company has paid the expenses incurred in inaugurating the plan, and also pays all of its current operating expenses.

Amendment of the plan is not possible without the consent of the company, because it is provided that proposed amendments must run the gauntlet of the two joint committees composed in equal numbers of representatives of management and employees, before they receive the final sanction of the elected representatives of employees from the various departments or divisions. No referendum to the body of employees is provided in such cases. By an amendment so adopted on December 7, 1933, it is provided that the plan is to remain in force until May 1, 1939.

It is clear that the company has actively participated in the drafting, adoption, and financing of the Goodrich cooperative plan, that the plan has never been put to a vote of the employees for acceptance or rejection; and that the employees have never had an opportunity of voting on whether they desire to be represented as provided in the plan or by Local No. 18319, of which a large number of Goodrich employees are members. The employees, as a body, have voted only on the selection of the drafting committee, as aforesaid, and in the elections conducted under the terms of the plan in October 1933 and October 1934. The employees would naturally want to participate in the selection of the representatives chosen under a plan which is in fact the collective-bargaining agency recognized by the company. Hence, the fact that 90

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percent of the employees participated in the annual elections affords no sufficient basis for inferring that they liked the plan or would choose it as against other alternatives. Furthermore, even though no overt threats have been made by responsible officials, employees would quite understandably be reluctant to render themselves conspicuous by refusing to participate in the elections, in views of the fact that the company is known to be strongly supporting the plan.

Notwithstanding the foregoing, it is claimed for the plan that it has the support of a majority of the Goodrich employees. In contradiction of this, union officials have testified that Local No. 18319 has, as members, 7,654 employees of the B. F. Goodrich Co.; and on the basis of such asserted membership it is claimed that a majority of the employees would choose to be represented by the United Rubber Workers Council.

There is a substantial controversy which well might lead to strife, if not resolved. In arguing against an election the company alleged that the present situation at the plant was peaceful and that an election would inevitably produce restlessness and confusion among the employees. On this point we think it is unnecessary to do more than state the board's adherence to the common belief that the device of election in a democratic society has, among other virtues, that of allaying strife, not provoking it. That potentiality of strife now exists in this plant because there are contending factions of employees, we have already shown. Certainly Congress in authorizing, by Public Resolution 44, elections to be held in the public interest dir not contemplate that contention must have reached the proportions of a threatened strike before an election order was issued.

We think the present case is one in which a secret election conducted by us would fulfill the purposes of Congress, as disclosed in section 7 (a) and in Public Resolution 44, Seventy-third Congress.

It remains to consider the appropriate form of ballot and other matters connected with the election.

Is the Goodrich cooperative plan capable of functioning as an agency for collective bargaining so as to entitle it to a place on the ballot? Collective bargaining involves far more than the mere adjustment of individual grievances. In the *Houde case* we emphasized that the ordinary everyday details which any employer would be glad to discuss with any employee or group of employees in no sense constitute the recognized subjects of collective bargaining, namely, wages, hours, and the basic working conditions affecting the plant as a whole.

It may be objected that the Goodrich cooperative plan is better adapted to bringing the grievances of the individual employee, or small groups of employees, by successive stages of appeal, up to the highest officers of the company, than it is to formulating and prosecuting mass demands of employees on basic matters affecting the whole plant. Significant in this connection is the fact that the plan does not provide for general meetings of employees, as in a union local, nor even for regular meetings of the whole body of representatives. These factors, if included in the plan, would obviously afford a ready means for the formulation of the collective wishes of employees, which are an essential preliminary to the process of collective bargaining. Nevertheless, as collective bargaining can, although not without difficulty, take place within the plan's framework, we conclude that there is no sufficient reason for excluding the plan from a ballot which offers the employees their free choice as to how they wish to be represented for purposes of collective bargaining.

Another feature of the plan which raises a serious problem is the fact that it is financed by the company, and that, in particular, the company pays extra salaries to the employee representatives under the plan. At the time when the plan was initiated by the company there existed a group of employees within the plant, we do not know how numerous, who favored affiliation with an outside union as their designated agency for collective bargaining. We may assume that there were also at the plant employees who preferred a plant organization.

At this juncture we believe that the company interfered with the self-organization of its employees when it threw the great weight of its financial support in favor of the groups of employees who wanted a plant organization, to the competitive disadvantage of the group of employees who wanted representation by an outside union. In effect this was a form of discrimination which handicapped the efforts of one group of employees in promoting their ideas on self-organization. The tendency of the thing at the time of the inauguration of the plan was corrupting and the continuance of financial support by the company at the present time is corrupting. This is particularly true of the payment of salaries to representatives. However, single-minded the elected representatives

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under the plan might be in their devotion to the interests of the employees, the provision for paying extra salaries to the approximately 150 employees representatives causes their independence of employer domination to be highly dubious. It is improper for the company to influence the choice of employees in the manner described above, which involves in substance the subsidizing of an active group of propagandists among the employees for the type of employee representation the company would prefer to deal with. In this case, however, the petition before us is simply a request for an election. There has been no complaint charging a violation of section 7 (a) of the National Industrial Recovery Act nor has the argument before us focused on this point. Hence, in this proceeding we refrain from passing specific judgment as to the illegality of the various forms of financial support of the plan by the company. Moreover, since the petitioners have not requested that we require an amendment of the plan as a condition of its being placed upon the ballot and since there has been no argument before us on this subject we shall allow the plan to go on the ballot as it stands.

It is contended in behalf of the company that for election purposes the 2,000 workers in the clerical force as well as the production and maintenance employees should be eligible. There is no provision for representation of the clerical employees under the cooperative plan, and it is available solely to production and maintenance groups. After the adoption of the plan, the clerical force drafted a plan of its own under which it is now represented. The local union represents only production and maintenance employees. Since the clerical force is not represented by and has no connection with either the cooperative plan or the local union, and since, regardless of the outcome of the election, neither the plan nor the union would represent them, there is no reason for allowing them to participate in an election which is in fact an election to determine whether the plan or the union shall act as the bargaining agency for production and maintenance employees.

The company also contends that only the employees on the pay roll as of the date of the election should be eligible to vote. The union states that since August 1, 1934, about 1,000 employees have been laid off, and for that reason August 1, 1934, should be used as a date to determine eligibility. It was testified in behalf of the company that the lay-off is purely seasonal and that the employees who have been laid off will be called back to work if, as and when orders come in. In normal years the seasonal peak of the company business occurs in November, depending somewhat on the action of the automobile manufacturers. It is indicated, therefore, that the 1,000 men have been temporarily laid off and will be recalled when needed, so a decision excluding all of them from voting would be unjustified.

On the other hand, the union did not petition this board for an election until September 7, 1934, and we see no reason in this case for setting a date to determine eligibility for voting purposes prior to the date on which the petition was filed. It is likewise true that the union should not be penalized because of the fact that the time necessarily elapsed in conducting proceedings in furtherance of the application for an election. The pay roll as of September 7, 1934, will undoubtedly include some of the 1,000 men who have been temporarily laid off. We therefore hold that all of the production and maintenance employees on the company pay roll on September 7, 1934, and, in addition, all production and maintenance employees who have been added to the pay roll in the period from September 7 to 2 days before the date of the election, and are still on the pay roll of the company 2 days before the date of the election shall be eligible to vote in the election.

FINDINGS OF FACT

1. The B. F. Goodrich Co. signed the President's reemployment agreement, effective August 1, 1933, and has been subject to the Rubber Manufacturing Industry Code and the Rubber Tire Manufacturing Industry Code since December 1933. The company manufactures rubber products and through sales agencies sells and ships its finished products all over the world. It employs approximately 12,000 production and maintenance employees, 2,000 clerical employees, and 859 to 900 supervisory employees.

2. The B. F. Goodrich Co. is a corporation, having its general offices and manufacturing plant at Arkon, Ohio, and sales and services agencies in Ohio and other States. The company engages in interstate commerce, obtaining raw materials from States other than Ohio, and shipping and selling its finished products all over the world, through sales agencies.

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3. The United Rubber Workers Federal Labor Union, Local 18319, for employees of the B. F. Goodrich Co., obtained its charter from the American Federation of Labor on August 6, 1933, and, according to testimony before us, has now more than 7,654 members. Local 18319, and its affiliated craft locals, are members of the United Rubber Workers Council affiliated with the American Federation of Labor.

4. In October 1933 the Goodrich cooperative plan was put into effect within the plant. The plan was drafted by representatives elected by the employees, with the assistance and cooperation of the management. It was approved by the elected representatives of the employees and by the management, and put into effect, without any further ratification by the general body of employees. Its expenses are financed by the company, which also pays salaries to employee representatives elected thereunder.

5. There are conflicting claims on behalf of the Goodrich cooperative plan and the United Rubber Workers Council as to who represents a majority of the workers of the B. F. Goodrich Co. for the purpose of collective bargaining. The employees have not yet had an opportunity to vote on acceptance or rejection of the Goodrich cooperative plan, nor have they had an opportunity to vote between the alternatives of the plan and the United Rubber Workers Council.

6. Continuance of the present uncertain situation is conducive to discord among the employees.

7. Approximately 1,000 workers have been laid off since August 1, 1934, because of a seasonal curtailment in the company's business. One thousand workers who have been laid off will be taken back to work as soon as the seasonal curtailment of business is over. Local No. 18319 made application to the Cleveland regional board for an election on September 7, 1934.

CONCLUSION

It is the conclusion of this board that it is in the public interest that an election by secret ballot of the employees of the production and maintenance department of the B. F. Goodrich Co. should be had to determine whether they desire to be represented by the Goodrich cooperative plan or by the United Rubber Workers Council for the purpose of collective bargaining as defined in section 7 (a) of the National Industrial Recovery Act and incorporated in Public Resolution No. 44 of the Seventy-third Congress.

ORDER FOR ELECTION

This proceeding having been duly heard by the National Labor Relations Board on October 18, 1934, upon the petition of United Rubber Workers Federal Labor Union, Local No. 18319 and upon testimony and evidence received at Cleveland, Ohio, on September 26 and 27, 1934, and thereafter at Washington, D. C., the board having herewith made its decision, its findings of fact, and its conclusion that it appears to be in the public interest to so order: Now, therefore, it is

Ordered, That within a period of 3 weeks from the date of this decision and between such hours and at such place as the director of the regional labor board for the eighth district may determine, having in view the making of the necessary mechanical arrangements, there shall be held under the supervision of a representative of the National Labor Relations Board an election by secret ballot of the production and maintenance employees of the B. F. Goodrich Co. who were on the company pay roll on September 7, 1934, and, in addition, all production and maintenance employees who have been added to the pay roll in the period from September 7 to 2 days before the date of the election and are still on the pay roll of the company 2 days before the date of the election, to determine whether they desire to be represented by the Goodrich cooperative plan or by the United Rubber Workers Council for the purpose of collective bargaining as defined in section 7 (a) of the National Industrial Recovery Act and incorporated in Public Resolution No. 44 of the Seventy-third Congress.

Ordered further, For the purpose of determining the eligibility of employees to vote, that 2 days before the date of election the B. F. Goodrich Co. shall submit to the director of the regional labor board for the eighth district, as representatives of the National Labor Relations Board, its pay roll lists showing the names of all its production and maintenance employees who were on its

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pay roll on September 7, 1934, and all of its production and maintenance employees hired since September 7, 1934, and who are on its pay roll 2 days before the date of the election.

NATIONAL LABOR RELATIONS BOARD.
H. A. MILLIS.
EDWIN S. SMITH.

STATEMENT OF W. L. CASH, AKRON, OHIO

The CHAIRMAN. You are employed by the Goodyear Co. in Akron, Ohio?

Mr. CASH. Yes, sir; for 23 years.

The CHAIRMAN. And you are one of the duly elected representatives of the Goodyear Industrial Assembly?

Mr. CASH. Yes, sir; at this time I happen to be the president of the "Senate", as we call it.

The CHAIRMAN. You may proceed and state your views.

Mr. CASH. Mr. Chairman, I do not want to take up too much time. I know the time is short, but in answer to some of the statements made here—of course I think we have got both sides pretty well represented. We have got the outside and the inside, and I believe you fellows are interested to know the situation. To show the percentage of our employees, whether they are satisfied or not, we have with less than 5 years of service, only 4,230 people in the factory. With 5 to 10 years' service, we have 4,455 people. With 10 to 15 years' service, we have 2,870. With 20 to 25 years of service, we have 662, which I happen to come in that group. With over 30 years of service, we have 14.

I think that is evidence for you to know that our employees must have been satisfied. That is one reason why we are opposing the Wagner bill. We have built up this spirit of cooperation over years.

We have, I believe, one of the highest paid, and I believe the Government statistics will show, in our factory today, we have our rates, taking a total of 2,500, and our janitor service, elevators, and all of that, which low-rated jobs as you know, our average rate, the average earnings in the factory today is 92.4 cents, which I believe is one of the highest——

The CHAIRMAN (interrupting). Per hour?

Mr. CASH. Yes; that includes 2,500 women.

The CHAIRMAN. Two thousand five hundred out of 15,000 workers?

Mr. CASH. Yes; and we believe in fact we know that due to the efforts of this organization in the past 16 years is what has brought this condition and our workers today, we have a few which I believe Mr. Trembley said that are with the outside organization, but we were perfectly willing, in fact we asked the National Labor Board and the Regional Labor Board I believe Mr. Trembley was one of the members before the National Board asking that an election be taken to see which side would represent those workers. At that time the outside organization which Mr. House represented had also requested and our management agreed.

The CHAIRMAN. Why don't you do that then?

Mr. CASH. Because Mr. House withdrew his request.

The CHAIRMAN. That is, the representative of the outside union?

Mr. CASH. Yes, sir.

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The CHAIRMAN. Why can you not have it now?

Mr. CASH. I do not think there would be any objection. I do not think they will do it.

The CHAIRMAN. Would you object to a vote being held now other than on the company's premises, Mr. House?

Mr. HOUSE. If they would agree to negotiate with the successful party. We put that up to Mr. Litchfield last week, that if he would agree to negotiate an agreement with the successful party, that we would agree to an election outside of the plant. Mr. Slusser made the statement that he would not let a dog of his go to the armory.

Mr. CASH. Mr. Chairman, I might say that our armory is at least a mile and a half or two miles from the factory. I happen to be one of the members that contacted our regional board which Mr. Lynn, I believe, is the chairman of in that district. I happen to be one of the members of our organization that contacted with him, and we thought everything was worked out satisfactorily until the request was withdrawn. In fact, I do not believe that they ever got to the point whereby it was any argument over where the election should be taken, whether inside or outside.

The CHAIRMAN. If you are quite confident that the majority of the employees would vote for the kind of organization that you represent——

Mr. CASH (interrupting). Absolutely.

The CHAIRMAN. You feel quite confident of that?

Mr. CASH. I feel that way.

The CHAIRMAN. Wherever the election is held?

Mr. CASH. I believe they would. The question is getting them to vote when it is that far from the factory. They are not that interested, lots of them. The fellows are not interested to vote.

The CHAIRMAN. Is there any hall nearer than the armory?

Mr. CASH. We could work out details closer than that.

The CHAIRMAN. Could you get a hall that was not owned by the company?

Mr. CASH. I would not say that they could get a hall. We have three plants there.

The CHAIRMAN. Did you not have the elections on different days for different plants?

Mr. CASH. Our organization?

The CHAIRMAN. Yes.

Mr. CASH. No; it was all held on the same day.

The CHAIRMAN. With three different plants, in casting the ballots of 15,000 men and women would be quite a task, would it not?

Mr. CASH. Yes. The way we had it set up, we have a plant there and we put in so many booths. There was one statement made by Mr. House there which I feel confident is not true, and that is when he said that a foreman got up. I believe that every foreman was instructed by the factory management and Mr. Litchfield and Mr. Slusser, due to the conditions to not take any part and not talk to any worker in the shop whereby they can say that there was some coercion used, and I believe that was carried out. I believe those were the instructions from our president.

Our election has been solely held by the workers in the plant. I have been on the assembly myself for the past 11 years, and as Mr. House stated that their members were instructed not to vote. I

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know they were instructed not to vote for me, and I happen to have carried by a very large majority when they had a man in the field running against me. I do not want to bring personalities in, but I think the true story ought to be known before this committee. I think we welcome any branch of the Government to check our records.

The CHAIRMAN. It would be unfortunate if the minority even votes for a strike. Would it not be likely to tie up the whole plant.

Mr. CASH. There have been threats put out around there and propaganda that they will bring the unemployed from Canton, which is 20 miles from Akron, and other parts in order to tie up the plant and prevent the majority of workers from working, and so as I stated here, I do not believe there is a plant in the country that is paying like that, and I do not believe the Government statistics will show any higher wages or any better conditions than we have in the Goodyear Tire & Rubber Co. in Akron. For that reason we oppose this bill, because we feel that if this bill is passed, it will be detrimental to such organizations which have been built up and would interpret section 7 (a)——

The CHAIRMAN (interrupting). This bill, if it is passed will undoubtedly affect the present method of financing your organization.

Mr. CASH. We feel that it should not be, because we have worked out satisfactorily, which we can prove, and we welcome any branch of the Government to check those facts. I have the figures right with me.

If there is any question I can answer, I would be glad to do it.

The CHAIRMAN. You may put in the record anything you desire now or later.

Mr. CASH. There was one statement raised about the way we act. We have a copy of our plan here. I would like to read that in.

The CHAIRMAN. Yes. Do you believe there is likely to be a substantial vote on Sunday for a strike?

Mr. CASH. That is the unfair part. I can give you exact figures of our workers in our plant. We have 14,686 workers in the plant at the present time, and the armory is the largest building we have in the city of Akron, in which all of their meetings are conducted behind closed doors. That would only seat approximately, I believe, 5,000.

The CHAIRMAN. Could you not open up a voting place and let the men come in one at a time and cast a secret ballot simply on the question of "Which do you prefer as the organization of the employees of this plant for the purpose of collective bargaining, the Goodyear Industrial Assembly, or the local—whatever its number or name may be—of the American Federation of Labor; yes or no." Just hand that out and let each man go in with a pencil and mark "yes" or "no."

Mr. CASH. We tried to work, Mr. Chairman—we have tried as I said with Mr. Lynn from our district to work out such a method if we could, but they withdrew.

The CHAIRMAN. Is the money available for holding such an election?

Mr. MAGRUDER. I assume the National Labor Board or the Conciliation Division has money available ordinarily within the jurisdiction for that purpose.

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The CHAIRMAN. Would you agree to whatever decision the fifteen thousand-and-odd employees made on that question?

Mr. CASH. Absolutely. I think we should.

The CHAIRMAN. Would you agree to that, Mr. House?

Mr. HOUSE. Providing there was a free choice.

The CHAIRMAN. It would be a free choice if it was held some place other than the company, and the money for the election and the ballots were prepared by the Government?

Mr. HOUSE. Speaking personally, I would say yes.

The CHAIRMAN. What is the company's attitude?

Mr. MAGRUDER. I do not know what the company's attitude has been in this case.

Mr. HOUSE. We would agree to an election if the company would agree to negotiate with the ones who won the election.

The CHAIRMAN. I think that is fair. This witness says you and your associates would agree to that so far as the employees are concerned.

Mr. CASH. I said we have in the past.

The CHAIRMAN. Of course we have to get the company's approval, and we would have to get them to consent to waive what they claim to be some legal rights which relates to the constitutionality of this whole procedure. However, if it were agreed to by you and aside from the operating under this law or under Resolution 44, it would be a mutual agreement apart and aside from any order issued by any governmental agency.

Mr. MAGRUDER. I think the director of the regional board is prepared to negotiate a consent election if everybody is agreed on the terms under which it is held.

The CHAIRMAN. If the employers—and I assume they will hear from those that are here or through the press—are any Akron papers represented here?

A VOICE. Both of them.

The CHAIRMAN. Mr. Litchfield is not here?

A VOICE. He was here yesterday.

Mr. CASH. I have said that we have asked for such. I do not care to go on record until the details are worked out as to where the election should be held.

The CHAIRMAN. If Mr. Litchfield desires to enter into an agreement in view of what has been said here, I will use my good offices to have the Department of Labor, not the Labor Board, because there might be some legal questions arise, although they could do it without issuing an order, and by agreement—they do have power of conciliation—and we could have it determined once and for all. But I only make that suggestion. I have no authority to go further.

Of course I do not know how serious the threat of the strike is. I take it that you do not take it so seriously?

Mr. CASH. Personally I know that in our plant that our workers are asking us every day, "What is going to happen, can we get to work in case they do?" Their main object is whether they will be able to get work and not that they want to strike in the plant. Those conditions are absolutely unfair to our organization.

The CHAIRMAN. I should think that if this local that you represent, Mr. House, would agree to abide by the vote for 1 year and not have any strike and abide by the decision, and the company would

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agree to carry on negotiations with the group, whichever group won out, that that would end all controversy for a year; but that would not prevent you, during the year, from continuing to agitate for additional members in your organization. Of course, in the meantime if this act becomes a law, different questions would arise as to the legal status of this organization. Do you follow me, Mr. House?

Mr. HOUSE. Yes.

The CHAIRMAN. It would be expected, of course, in good faith and as a matter of honor, that you would do nothing to further a strike within a year until another election is held.

Mr. HOUSE. Of course, I cannot speak for the organization.

The CHAIRMAN. It would not be fair to ask the employer to give up whatever legal rights he may have if the election turned out against your group, and you started to call a strike.

Mr. HOUSE. It would be foolish to strike if we did not have the majority. I would like to ask there, did the industrial assembly take a strike vote inside of the factory?

The CHAIRMAN. Is that true?

Mr. CASH. I might say there that our employees have requested in case that this minority—as I have said before, it is about four or five hundred, or three or four hundred which meets at those meetings—if they take a vote and try to pull them out, that they requested us to hold a vote within the plant to give them a chance to see what they want.

The CHAIRMAN. The decision of your group is that you would like to have a vote in case the other group have a vote, for the purpose of showing the contrast between the numbers that vote for a strike in their group and the number that vote against a strike in your group.

Mr. CASH. Personally, we are willing for anybody, if it is the Government or the local or the national, to intercede if such is necessary.

Here are some of the cards that they are putting out at our gates. I do not know whether you want me to read it.

The CHAIRMAN. It may be put in the record.

(The same is as follows:)

IMPORTANT! READ CAREFULLY!

United Rubber Workers Federal Labor Union No. 18282, composed entirely of employees of the Goodyear Tire & Rubber Co., has been organized for the past 18 months. We have tried to carry out the purpose of this organization by peaceful persuasion without result. We were told that the company would deal only with the assembly. The company and everyone else knows that the assembly has no power to bargain collectively. They can only beg. We have exhausted every means whereby we might establish collective bargaining, peacefully. We want to remain peaceful, but we also want collective bargaining. We want to know by April 1 just how many employees really want to have a voice in the determination of their wages, hours, and working conditions. If you want that, let's go get it! This will be your last chance to reinstate for one dollar. The initiation fee will be raised April 1st. President Roosevelt can't win alone! Let's help him.

SPECIAL OPEN MEETING

For all workers in Goodyear, Firestone, and Goodrich at the Goodyear Local Hall, 1099½ E. Market St. Tuesday evening at 8 o'clock. Come and bring your buddy.

U. R. W. F. L. U. No. 18282, GOODYEAR LOCAL.

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The CHAIRMAN. Is this your organization, the United Rubber Workers Federal Labor Union, Mr. House?

Mr. HOUSE. Yes.

The CHAIRMAN. You are affiliated with the American Federation of Labor?

Mr. HOUSE. Yes.

Mr. CASH. Mr. House handed me that card himself at the gate.

There were also statements made in which the previous vote we have taken a short time ago, in fact just a week or two ago, in regard to whether our employees wanted to work 24 or 30 hours a week. I believe it was stated that 9,000 and some voted in such election. That election was asked for and checked, each representative in the respective precincts. Some of the workers seemed to want 24 and some wanted 30. We were one of the first I believe, that went on record as a 6-hour day, our assembly. And we maintain it should still be.

We have taken this check to find just what the sentiment of the employees wanted to do. It would either mean to lay off approximately 1,500, with our present production, that has gone down, and work 5 days, or work 4. So we put it to the employees in that manner, and the results were it was 9,491 voted, but this did not include two other departments, the maintenance, which is the machine shop, and the engineering, and the mechanical goods department, because they were working more time than 30 hours at that time, or around 30 hours. But each assembly was checked to take that vote, and they have taken it, and we are abiding by the decision of the workers.

The CHAIRMAN. Are there any other suggestions you want to make? Are there any further statements?

Mr. CASH. Are there any questions?

The CHAIRMAN. No; I think your case has been very fully presented.

Mr. HOUSE. May I add one statement for the record?

The CHAIRMAN. Yes; you may.

Mr. HOUSE. At one time 53 out of the 60 of the senate and representatives of the industrial assembly were members of the outside union. All of those present here today were at one time members of the outside union.

Mr. CASH. I might state also that Mr. House was a member of the assembly until he resigned to become president of the local.

Mr. HOUSE. I was, and I withdrew.

STATEMENT OF WILLIAM DUNNE

Mr. DUNNE. May I file a statement, Mr. Chairman? It is in the name of the Communist Party which I represent here. My name is William Dunne.

The CHAIRMAN. What is your residence Mr. Dunne?

Mr. DUNNE. New York City.

The CHAIRMAN. What office do you hold in your union?

Mr. DUNNE. I am connected with the Daily Worker in a journalistic capacity.

The CHAIRMAN. You are presenting a brief?

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Mr. DUNNE. It is in opposition to the Wagner bill, for the record. We are also submitting our own proposals for the record in the same document.

The CHAIRMAN. I appreciate, Mr. Dunne, your sparing our time.

(The brief referred to follows:)

BRIEF SUBMITTED BY WILLIAM DUNNE

As spokesman for the Communist Party of the United States, I am appearing before the Senate Committee on Education and Labor to state the opposition of the party and its central committee to the so-called "Wagner bill", and its main reasons for this opposition.

The Communist Party, early in 1934, when the provisions of the first draft of the Wagner bill were made public, stated its opposition and gave the reasons for it in its press, and in public hearings and meetings. It declared the Wagner bill was an attempt to set up a new set of illusions regarding the beneficient role of the Roosevelt government of monopoly capital among millions of American workers whose faith in the good intentions of the administration and its N. R. A. was beginning to wane rather rapidly.

The Communists at that time declared that the proposed bill was intended to strengthen measures for establishing and maintaining compulsory arbitration under Government auspices in labor disputes. We said that the official labor leaders of the A. F. L. and other labor organizations who supported both N. R. A. and the Wagner bill were acting against the interests of the membership they are supposed to represent and against the interests of the whole American working class.

We have not changed our opinion as a result of the rewording of the draft bill or because of the changes in some of its provisions. As a matter of fact, because of some new false hopes, generated by these changes, by the desperate desire of millions of wage workers for some improvement in their terrible conditions and by the unscrupulous efforts of most of the official family of the A. F. L., Socialist Party leaders—and by the demagogic activities of the horde of time-serving economists and pretentious social-welfare workers which the N. R. A. machinery jerked from deserved obscurity—the present form of the Wagner bill is more dangerous to the economic and social interests of working people than it was before.

A dispute over wages and working conditions in any important section of industry is in essence a test of power between capital and labor, with the Government and its various agencies always on the side of the employers as a class. This is necessarily so because so-called "impartial government" is a polite but dangerous fiction.

Government that does not represent the interests of the dominant class in any given epoch of society is a paradox. Government is the organized power of the dominant class. In the United States this is the capitalist class. In the Union of Socialist Soviet Republics government represents also the interests of the dominant class—the working class.

All this is, of course, elementary. Conscious representatives of the capitalist class know this just as well as do Communists and other class conscious workers. But capitalists and their representatives are very anxious to conceal this fact from the great mass of the toiling population. If they cannot succeed in doing this—and the present ecoonmic crisis, now of 5½ years' duration with its unspeakable misery for all sections of the toiling population, makes it increasingly difficult—political crises inevitably develop.

More and more the ruling class and its spokesmen and general staff are forced to resort to complicated maneuvers. As the purposes of these maneuvers are discovered by the workers, a whole series must be invented, one following the other. As these fail to achieve the desired results, that is, to confuse the whole working class, especially that section in decisive industries, divide its ranks, create suspicion, and dissension, and make its struggles hesitant, weak, and ineffective, and prevent the outbreak of conflicts between employer and worker, more forcible measures are indicated.

We saw this strategy at work in the railway and auto and steel situations—with President Roosevelt and Mr. Green duplicating the role of Wilson and Gompers in the steel campaign of 1919, when the full pressure of the Govern-

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ment and the official American Federation of Labor leadership was brought against the struggles of terribly exploited and oppressed steel workers.

Promises to workers whose burdens have become intolerable, promisory notes that always have and always will be repudiated much faster than were the European war debts, are much in vogue now.

But these kinds of promissory notes have a feature all their own; foreclosure proceedings take place against those to whom they are given—not against those who sign them.

In between the lines of these documents there always lurks the threat of further suppression or jeopardy of workers' rights, either by force in one form or another, or by cajolery and deception, or by a mixture of both.

The Wagner bill is this kind of a domument. This we will show later. First it is necessary to be specific in regard to the present economic and political situation in the country—a situation whose main features must give the greatest concern for all working people and also the general staff of American capital and its Government. It is out of these specific instances that the Wagner bill arises.

Since the Wagner bill is intended to strengthen or replace clause 7 (a); since clause 7 (a) brought about the greatest development of company unionism ever seen in this country; since clause 7 (a) was intended to substitute futile negotiations under control of Government agencies for effective organization and struggle by workers; and since the economic and social status of the American working class as a whole has been reduced, by price rises and actual wage cuts and permanent mass unemployment, all under the actual operation of the National Recovery Act and its clause 7 (a), as the C. P. told workers would be the case; and since in spite of clause 7 (a) many hundreds of thousands of wage earners have organized, struck, and attempted to get a larger share of the employers' profits, it follows logically that the Wagner bill, if it is not a mere literary exercise, must be designed as part of the program of capitalist recovery—to protect profits; to make it more difficult for wageworkers to exercise effectively their bargaining power, and, most of all, to prevent the effective use of their main weapon, the strike.

The following outstanding developments, the facts of which are more or less a matter of public knowledge, many of them contained in official Government reports, are some of the main features of the present economic and political situation which give rise to such measures as the Wagner bill:

There is the increasing contradiction between the constantly lowered income of the working population and growing concentration of capital with huge increases in profits; prices are rising. Together these form the economic base for the present wide-spread wage demands, union-organization movements, and the unprecedented wave of strikes, movements of the unemployed, etc.

I furnish this committee with the following unassailable facts, most of them gathered from reports of Government and business agencies, showing the continuous degradation of the living standards of all working people under the National Recovery Act, its codes, and its administration. It can be said with absolute truth that in the 6 years of the crisis, unrelieved so far as working people are concerned, with the process of pauperization, aided by the National Recovery Act, the United States has become a gigantic poorhouse—and that in many large sections it is at the slum level.

SPEED-UP

Code authority study of 672 cotton-garment plants show following speed-up:

Number of plants	Hours worked	Increase in productivity
		Percent
508	40 or less	25
68	40–45	43
71	45–50	90
25	50 and over	102

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NATIONAL RECOVERY ADMINISTRATION AND NEGRO

Federal Emergency Relief Administration figures for relief, Davis of the joint committee on national recovery declared at National Recovery Administration hearings, showed what National Recovery Administration has meant for the Negro workers:

"In October of 1933 roughly 2,117,000 Negroes were in families receiving relief. This was 17.8 percent of the total Negro population as of 1929. Today the same source shows 3,500,000 Negroes in families receiving relief, or 29 percent of our 1930 population."

Further:

"We estimate that today 3,000,000 Negro workers are jobless. Not the least contributor to this mass unemployment has been National Recovery Administration."

Permission to pay less than the minimum code wage rate to Negro workers granted early in June 1934 to the Central Spinning & Weaving Co. of North Carolina, by the Silk Textile Code Authority. Minimum rates for Negro workers are now $10 a week instead of $12. This will be used as precedent for other companies.

Miserable conditions imposed on Negro workers in textile plants of the South as a result of the Textile Code, are disclosed in a survey made by John P. Davis, of the joint committee on national recovery, showing:

"The majority of skilled Negro machine operators and Negro foremen, while working only the maximum, 40 hours a week, had their wages cut to the minimum of $12 or less." (Some were found working 54 to 76 hours at 10 cents per hour.)

"Reclassification and subterfuges are frequent. Skilled machinists had their time divided between machine work and cleaning. Painters were classified as 'outside workers' and exempt from maximum hours. There is much firing and rehiring."

"The excepted group—cleaners and outside workers—had their wages decreased with little or no cut in hours."

Men work 54 to 60 hours for $9 to $11 per week.

Women work 54 to 60 hours for $5 to $8 per week.

Negroes at the same time are forced to buy from company stores with prices 20 to 30 percent higher than independent or chain stores. In many localities the Negroes' only pay was in the form of a credit slip.

NATIONAL RECOVERY ADMINISTRATION AND WOMEN

Out of 465 approved National Recovery Administration codes, 120 carry lower minimum wages for women than for men, according to a survey by the Women's Bureau of the United States Department of Labor.

NATIONAL RECOVERY ADMINISTRATION AND UNEMPLOYMENT

American Federation of Labor, in monthly report on unemployment (Dec. 28, 1934) admits that unemployment during November 1934 increased for the sixth successive "new deal" month to 11,459,000, as compared with 11,030,000 jobless in November 1933, an increase of 429,000.

The Pen and Hammer study shows by their estimate on unemployment that in November 1934 there were 450,000 more workers jobless than in October 1933, or a total of 14,525,000 unemployed workers in the United States.

Hand in hand with this, employed workers' wages are further cut. Report of United States Bureau of Labor Statistics shows that between October and November employment in nondurable goods industry group declined 2.6 percent, and pay rolls decreased 3.8 percent. In the durable goods groups, employment decreased 1 percent from October to November, and pay rolls decreased 0.6 percent.

The United Mine Workers Journal (Feb. 15, 1935) says:

"The record of National Recovery Administration, now almost 2 years old, should make the cold chills of apprehension run down the spinal vertebrae of every captain of industry in America." In other words, labor is losing faith in National Recovery Administration, this United Mine Workers Association organ discovers. Mine workers are not going to submit much longer to Na-

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tional Recovery Administration conditions of low wages and continued mass unemployment.

Recent report, National Recovery Administration Research and Planning Division. In December 1934:

1. Pay rolls were 60 percent of the aggregate pay rolls for 1926.

2. Dividends and interest payments of corporations were 150 percent of 1926 total.

Nearly 300 companies whose profits are compiled by the Federal Reserve Bank of New York showed for the first 9 months of 3 years the following gain: 1932, $100,000,000; 1933, $202,800,000; 1934, $430,500,000.

These industries where exploitation speed-up are most outstanding since National Recovery Administration show:

	Deficit, 1932	Profit, 1933	Profit, 1934
Automobile	$18,700,000	$82,500,000	$86,600,000
Automobile parts	8,800,000	6,900,000	21,000,000

Recent table of Bureau of Labor Statistics, showing decline of weekly average wages since National Recovery Administration began in June 1933.

	June 1933	June 1934	Nov. 1934
Automobiles	$23.05	$22.54	$22.80
Boots and shoes	15.68	17.20	14.51
Tobacco (and snuff)	13.43	13.70	12.84
Iron and steel	18.33	23.86	17.43
Rubber tires (and tubes)	24.28	23.48	22.67
Woolen textiles	16.85	16.07	16.25

In all material it is proven by cases here and there that "minimum wage becomes maximum wage."

COST OF LIVING

Retail food prices rose 34 percent from March 1933 to February 26, 1935. In some cities the rise is as high as 49 percent. Various articles rose as high as and up to 138 percent.

A. F. of L. monthly survey reports 13½ percent rise in cost of living from January 1933 to January 1935; 8 percent rise in wages during the same period; 5½ percent drop in real wages.

The following is an analysis of the so-called "Roosevelt social security program" as it is designed to affect the present hunger standard of the increasing millions of unemployed. This analysis shows that the plan intends to make their wants still more acute, their insecurity and misery still greater, to drive to still lower social levels the millions of workers whose labor power brought into the billions of wealth now in the hands of a small clique of multimillionaires—the monopolists—to which all factions of the Roosevelt administration cater to or openly represent.

ANALYSIS OF THE ROOSEVELT SOCIAL SECURITY PROGRAM

FACTS

1. One million five hundred thousand unemployables taken off Federal relief and thrown to mercy of States.

2. Calls for taking 3,500,000 employables off relief roles and putting them to work, calling for a maximum wage of $50 a month or $12 a week.

3. Four million eight hundred and eighty thousand dollars to be appropriated.

4. Payments are to be less than prevailing rate in locality.

5. Federal Emergency Relief Administration by order of Roosevelt to stop present grants to State by February 1. Full program supposed to go into effect by June 30. But Peoples, Roosevelt relief expert, says plan cannot possibly go into effect until 30 days after passage, and in full not for a year at least, so that ending of F. E. R. A. grants to States leaves the 3,500,000 as yet unprovided for.

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6. Provides for jobs for only 1 out of every 5 unemployed persons, even if plan is carried out in its entirety.
7. Carries a provision for a $2,000 fine.

EFFECTS OF THIS PROGRAM—DIRECT CUT IN RELIEF

Fifty dollars a month wage, or $12 a week, if paid out, which is unlikely, means a direct cut in the living standard of workers, a slave wage under forced labor; according to Connery, head of Labor Committee, a "A starvation wage rate."
according to Connery, head of Labor Committee, "A starvation wage rate."
But even this $50 will not be paid for. There are approximately 3,650,000 unemployed, according to Federal rolls, to be provided for with a total appropriation over 2½ years, when plan ends, of $2,226,250,000 for wages; rest of sum goes into material, according to figures of Government. This gives us $24.39 a month per worker for 2½ years. When we consider that there are 4 to 4½ in each family, the pitiful nature of this appropriation is seen. Even the 391,000 C. C. C. boys and men in October 1934 received $16,939,595 in wages, or an average of $43.32 a month.

LOWERING OF WAGE RATE GENERALLY

The scales called for are even lower than the C. W. A. rates. William Green has given his tacit consent to the establishment of rates below the prevailing rate in the locality. Employers will use the scales on the relief jobs to cut wages they pay their own workers.

PLANNED BY ADMINISTRATION

Representative Buchanan, Chairman of the Appropriations Committee, who drafted the relief bill giving Roosevelt unlimited power in the control of relief, revealed the relief-slashing designs of the administration under the proposed relief set-up. "Security of home and country is threatened when 20,000,000 people are on the dole, one-third by the grace of State political machines. We're determined to end the waste. This appropriation will do the job" (New York American, Jan. 23, 1935). Thus a direct threat against all those on relief rolls. He also spoke about the thousands of grafters "packing the rolls."
It is pertinent to ask here, Senator Wagner, if as you claim, you have the welfare of the working people at heart, and that your bill is designed to aid them, why you took a leading part in defeating the so-called "prevailing-wage measure" and voted for an unemployed relief wage that, if not fought against and substantially increased, must inevitably place vast numbers of workers still more at the mercy of the monopoly employers than at present; that will drive down still further the wages of employed workers; that will, because of dire necessity, make potential strikebreakers of unemployed workers who find that even the starvation wages of private industry are slightly higher than the proposed coolie level for relief workers.
There would seem to be only one correct answer to this query. It is that you are not interested in the welfare of working people except when destitution appears to be making them desperate. Then you come forward with more promises and the special advocacy of certain "rights" of which monopoly capital and its government promptly prepare to prevent the exercise. This, in a nutshell, is the labor policy of the Roosevelt administration and its hangers-on in the labor movement, in Democratic, Republican, and Socialist Parties. The answer is, to put it still more clearly, that your bill is not designed to help working people and their organizations in the struggles against the constant encroachments of monopoly capital but to hamper them. You have said, if you have been quoted correctly, that what you want to do is to preserve the status quo, but the employers never stop their attacks on wages, working, and social conditions. For this reason, for working people, the status quo means not only the continuance of the present employers on their living standards and organizations but more vicious attacks and worsened living conditions.
Furthermore, since under N. R. A. company unionism, one of the major signs of the growing fascistization in the United States, has forced some 45 percent of workers into these employer organizations, the status quo means at best the

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legalization of the existing company unions. In the steel industry some estimates have shown that 85 percent of the workers had been forced into company unions.

It is all the more significant, therefore, in considering the merits of the Wagner bill, that, according to reliable press reports, Senator Walsh, chairman of this committee, told a representative of a company union during the recent hearing, that "this bill doesn't hurt your union"; that Senator Wagner assured the same person that "it (the bill) doesn't say anything about the company * * * if the board attempted to declare your organization illegal it would act illegally." Yet, on another occasion, and to a representative of bona fide labor organization, Senator Wagner stated categorically that his bill "outlaws the company financed or controlled union." (Mar. 27.)

It appears that Senator Wagner is following the policy of a certain candidate for Parliament in England, whose early education had been neglected, and who stated in his campaign speeches that if elected he would be "like Caesar's wife—all things to all men."

It is clear that the creation of additional confusion as to the purposes of the Roosevelt administration has begun even before the passage of the Wagner bill. Every important labor struggle since N. R. A. has been marked by the attempt of the Government and its various agencies to create division in the ranks of the workers involved, to confuse issues, to try to delay organized action by workers by all possible means (steel, auto, textile, marine, etc.), and if these attempts fail, to put no obstacles in the way of employers crushing these movements by force, as in the textile and West coast maritime strike.

This brings us to another infallible sign of the fascistzation process going on under N. R. A., that is, the growing use of sweeping injunctions against labor—with their subsequent train of mass arrests—to the increasing use of troops, police, and privately paid professional gunmen against strikers and the unemployed. The facts of these developments are so notorious that it is not necessary here to detail them. With these evidences of fascist development, the Wagner bill makes no pretense of dealing.

The enormous and unprecedented military, naval, and air appropriations—the heavy increase of all armed forces—are not only evidences of the drive of monopoly capital and its government toward war as the way out of the crisis, but also of preparations for more suppression of the organizations and struggles of American working people. There is more and more evidence that war and fascism on the American plan are being considered with the utmost seriousness in the highest circles of Wall Street and in the Roosevelt administration. The Wagner bill, even though some factions of the Roosevelt administration and certain groups of employers may not believe it necessary now, is an integral part of this set-up.

The Communist Party is not opposed to the Wagner bill because we are opposed to legislation in favor of workers and their organizations. We are opposed to the Wagner bill because it is opposed to the interests of working people and their organizations. We are opposed to the bill because it is a compulsory arbitration measure in essence. It sets up new police powers in industrial disputes to enforce compulsory arbitration directly under the control of Government agencies. Under such a bill collective bargaining is a cruel brand. The right to strike would be questioned and then destroyed.

Why do we not offer amendments to the bill? Because to do so would be to help to deceive workers into thinking that the bill contains something inherently good. It does not.

While the working people of this country sicken from the yellow fascist pestilence spread by the antilabor Hearst press; while the country is infested with many antilabor demagogues, garbed in many colors and costumes, ranging from the black cassock of Coughlin to the green pajamas of Huey Long; while banker leaders of the Legion, like Belgrano, encourage, organize, and justify murderous attacks on hungry strikers and call for exile and the death penalty for Communists; while Green, Woll, Lewis, Hillman, and other official leaders of the A. F. of L. make with Richberg and Roosevelt a Pax Romana—a peace of death for labor, such measures as the Wagner bill clearly will furnish a common meeting point, sooner or later, for all antilabor forces. We Communists said this same thing about N. R. A. when its preliminary ballyho almost drowned our voices. We were right. Today, we say the same thing about the Wagner bill. The Roosevelt administration today is the focus point for American fascist reaction.

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The Communist Party of the United States has a program that meets the immediate needs of the American working class, and of the entire labor movement, and that it would like to see enacted into the law of the land. This program includes the following points and as a substitute for the Wagner bill we propose that the Congress enact legislation embodying the following points: (If the question of the constitutionality of such legislation is raised we reply that before and since the N. R. A. the Constitution and the Bill of Rights has been pretty well riddled—in favor of the employers and the ruling class generally, and if the will and the power to do so is present, the provisions of the Constitution which sanctify the rights of property as against rights of working people can also be abrogated.)

The Communist Party wants legislation that includes:

1. The immediate enactment of the workers' unemployment and social insurance bill—the so-called "Lundeen bill", H. R. 2827.
2. Declaring illegal company unions, and any and all forms of so-called "employee representation."
3. Declaring that the right of workers to organize freely in unions of their choice, without intimidation or coercion by employers and their agents shall be inviolate.

(*a*) Specifically legalizing the right to strike.

4. Specifically declaring illegal the use of the "blacklist" for the purpose of intimidating workers and prevent union organization or other forms of labor activity.
5. Declaring illegal any interference by employers, their associations or agents with workers' rights of free speech, free press, and free assemblage.
6. Declaring specifically that the provisions above shall apply without discrimination to all working people regardless of occupation, sex, race, nationality, religious and political opinion.
7. Specifically declaring illegal any discrimination by employers against Negro workers in the matter of employment, wages, and working conditions.

The Communist Party does not propose the above legislation as its solution of the crisis or as the way out of the morass of misery into which capitalism has plunged the working population. Neither does it believe that such legislation would be passed by any Congress without a majority from the ranks of militant labor. The Communist Party does believe, however, that the measures it proposes meet the immediate needs of the labor movement. The Communist Party of the United States further believes that such measures would strengthen the working class and its organizations greatly in their necessary and constant combats with the capitalist class and enable them to beat back the present gigantic offensive against its living standards, its organizations, its elementary democratic political rights, and against fascist reaction.

Such measures would strengthen the working class and enable it to organize and lead its allies—the exploited farmers, the doubly oppressed Negro people, the ruined and suffering lower middle class—in the decisive struggle for the revolutionary way out of the crisis.

For the working people of this country there is only one way out of this crisis that does not lead to the horrors of fascism and war—the overthrow of the dictatorship of bankrupt capitalism and its antilabor institutions and establishing in their place the only true popular democracy—a workers' and farmers' government—the dictatorship of the working class, headed by its Communist Party. This is the Communist answer to the crisis with its indescribable mass misery, to monopoly capital's program of hunger and war. This is our answer to the N. R. A., to the Wagner bill, and all other such legislation.

Statement Submitted by J. L. Walker, Representing Manufacturing Industries in Aurora and Fox River Valley, Ohio

The area which I represent is 90 percent industrial. It is located in the Fox River Valley, some 36 miles west of Chicago and includes the cities and towns of St. Charles, Geneva, Batavia, North Aurora, Aurora, and Montgomery. These communities are primarily manufacturing centers and have been ever since their origin.

A conservative estimate of the number of individuals employed in industry at the present time, both male and female, is somewhere in the neighbor-

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hood of 25,000. Most of the concerns have been in business for more than 20 years. While our community is a thoroughly representative American industrial area, the great diversity of the products we manufacture which range from heavy conveying machinery to women's corsets and brassieres, makes our problems manifold.

For a number of years the manufactures through the years this group of employers have constantly and conscientiously endeavored to maintain for all employees a fair rate of wages commensurate with living conditions in the area in which they operate.

The proof that they have succeeded in doing this very thing is set forth unmistakably in the large percentage of homes owned by workmen and by the very significant fact that although there are few large fortunes in our community we take pride in a generous number of moderately well-to-do citizens.

All through the past 5 years the records show that the valley has stood near the top in the average number of people employed, as compared with other communities of like size. During the 12-year period, between 1920 and 1932, labor disputes were few and far between, and of little or no consequence. This is common knowledge, and labor has been attracted to our community as a result.

Gentlemen, it is not my purpose to extol the Fox River Valley as an industrial Utopia. As I stated before, our community is a representative one and it follows that legislation affecting our welfare and prosperity will similarly affect the welfare and prosperity of manufacturing areas throughout the Nation. With this in mind, I think you will regard as significant the fact that our 12-year record of—I might say—universal employment and freedom from serious labor disputes was accomplished under conditions known as the open shop. True, some of our plants had trade unions, but none except the foundries had closed-shop conditions. It is not coincidence that these were the only ones who had any trouble.

Since 1932 and coincident with the inception of the N. R. A., many of our plants have been partially organized by professional labor organizers. These gentlemen, were seemingly loath to correct the erroneous idea prevalent among the workmen that they must join a union. What has been the result? Rumblings of dissatisfaction, threatened walk-outs, some strikes, and a pronounced general feeling of unrest, all of which was extremely unfortunate for some companies already in financial struggle.

Surely, such widespread discontent must inevitably mitigate against our universal objective of industrial recovery. Yet at this very time—as though adding fuel to the fires of chaos—a Senate bill has been introduced which, if enacted into law, will irreparably promote strife in American industry. I refer to Senate bill 1958 which will make it practically impossible for employees and employers to deal with each other on a collective bargaining basis which excludes professional labor leaders controlled from outside the ranks of the employees—even though these employees preferred to elect their own representatives and deal through them.

Both employers and employees who have informed themselves on this proposed legislation are united in opposing it. It is evident to both that its enactment would assure the domination of labor boards by organized labor agents. Further, it would permanently establish a majority rule principle in employment relations, thus depriving minorities of any real right to bargain, except through professional leaders. This is clearly discriminatory and un-American.

We have a large percentage of employees who at some time in the past have been affiliated with unions and who have had contacts with professional agents. They have no desire to renew either the affiliations or the contacts.

All of our plants have made every effort to live up to the requirements of the N. R. A., nevertheless we have been harassed with code authority investigations and complaints made to the regional labor board, all of which have been decided in our favor, and which never should have been brought to the attention of the board. At the present time some of these same cases are again being filed, although we have already received one decision.

In the past 3 months we have had inquiries in many lines of industry, business in the valley looks somewhat better. All of the plants are willing to take orders on a very small margin of profit in order to maintain their working forces and give more people employment. Everything that in any way interferes or retards such a condition is in our opinion unnecessary and uncalled for.

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STATEMENT SUBMITTED BY ABRAHAM G. FELDMAN, PRESIDENT AND TREASURER OF THE STORKLINE FURNITURE CORPORATION OF CHICAGO

My name is Abraham G. Feldman, president and treasurer of the Storkline Furniture Corporation of Chicago. I am speaking for my firm who represents net assets of $1,369,000. We employ about 350 people and the first 3 months of this year our pay roll amounted to about $130,000. I am here also to represent and speak in behalf of the furniture manufacturers of Chicago.

I feel rather nervous in speaking before such a distinguished body of men and therefore hope you will bear with me for the time which was allotted to my talk.

There are about 243 manufacturers in Chicago with about 8,000 employees representing a wage of around $8,000,000 per year and a capital investment of around $25,000,000—the output is around $29,000,000 per year.

Chicago is considered to be the largest furniture-producing center in Illinois. The products that we manufacture in Chicago consist of bedroom furniture, dining-room furniture, cabinets, furniture novelties, and radio cabinets.

The greatest part of the output consists of upholstered and living-room furniture. My firm has been in business for 20 years and never had any labor trouble. This is becase our employees have been able to earn a decent living in our factory, and all of them are contented and happy. This statement that I have made is honest and truthful.

I will give you an example of what happened over a year ago, when a committee consisting of three men called to see me. One of the men introduced himself as a business agent representing the Cabinet and Carpenters' Union of America. These men told me that they wanted to organize our factory. My answer to this was that I would be very happy to allow them to go through our factory and talk to our employees.

Inasmuch as I knew the people who worked in our factory, I felt confident that they would not be successful in accomplishing what they set out to do.

I sent one of my assistants with these men to take them through the factory so that they could talk to the men working on the different machines. I will give you one example as to what occurred when the business agent approached the first man and told him what his mission was—that is, to join the union of the American Federation of Labor.

Our employee, who was working on a band saw at the time, replied that he had been a woodworker for 30 years, that he had been working for the Storkline Furniture Corporation for 16 years, and was pleased with the condition and wages, also the personnel.

The business agent had the same reply after questioning about 40 people—none of them were in favor of joining the union.

When the business agent came back to my office, he stated that inasmuch as I was in favor of organizing the factory, he was very much surprised that the employees refused to join the union. I have not seen these men ever since. By the way, the three gentlemen who called on me had at their disposal a Cadillac car in which they were traveling from place to place.

I will give you another example as to what happened in Chicago in the living-room furniture industry. They paid their employees a decent wage, but the manufacturers who make upholstered furniture were less fortunate than we were and the labor officials were successful in organizing their employees and what happened? Strikes after strikes—and this was against the will of the majority of the employees.

Several of the manufacturers are practically broke. Business in the furniture industry for the past 4 years has been very poor and all of us had our hands full trying to keep our heads above water. We had to sell merchandise very closely and had a lot of grief in collecting after the merchandise was shipped. Then, when trouble arose with the employees which was caused by outside instigators, it was the final blow that was struck to several manufacturers in our city as well as other cities in the upholstering line.

The code provide for a minimum wage of 34 cents per hour. The average rate that our men in the woodworking and finishing departments and also other departments earn is about 65 cents per hour. This also applies to the other furniture industries in Chicago.

If as a result of the passage of the bill our furniture factories are unionized and wages are raised higher than they are today with materials going up, we will not be able to sell our products and will be forced to close our factories

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which means throwing thousands of people out of work. This condition would certainly never bring prosperity back to this country.

I could stand before you and give you a dozen or more examples as to what happened in Chicago in other industries which were organized by the American Federation of Labor. The condition of these manufacturers is deplorable but my time will not permit me to go into this.

We had 3 months of good business from January up to date, and were happy that we were able to employ men and women. Our aim, to continue and create new ideas and styles in furniture for the public. In doing this we will be able to employ men and women in our organization. This also applies to the other manufacturers in Chicago.

If the Wagner bill, S. 1858, which is before you gentlemen should be adopted and the so-called "labor deputies" or "business agents" are allowed to interfere and run our businesses which have taken years to build, I predict the passing of this bill will mean chaos to the furniture industry.

(Whereupon, at 4:40 p. m., a recess was taken until Friday, Mar. 29, 1935, at 10 a. m.)

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NATIONAL LABOR RELATIONS BOARD

FRIDAY, MARCH 29, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met at 10 a. m., in room 318, Senate Office Building, Washington, D. C.

Present: Senators Walsh (chairman), Murphy, Thomas, Murray, and Borah.

The CHAIRMAN. The committee will please come to order.

There was one witness that was unheard yesterday. Will that witness please come forward?

(No response.)

The CHAIRMAN. Is anyone here representing the Storkline Furniture Corporation? Mr. Feldman?

STATEMENT OF ABRAHAM G. FELDMAN, PRESIDENT AND TREASURER OF THE STORKLINE FURNITURE CORPORATION, CHICAGO, ILL.

The CHAIRMAN. What is your full name, sir?

Mr. FELDMAN. Abraham G. Feldman.

The CHAIRMAN. Your residence?

Mr. FELDMAN. Chicago.

The CHAIRMAN. And with what business are you connected?

Mr. FELDMAN. I am the president and treasurer of the Storkline Furniture Corporation.

The CHAIRMAN. How many employees has that company?

Mr. FELDMAN. Three hundred and fifty.

The CHAIRMAN. Where is its plant located?

Mr. FELDMAN. In Chicago.

The CHAIRMAN. And you are here as representing yourself?

Mr. FELDMAN. Yes, sir; and also the furniture manufacturers of Chicago.

The CHAIRMAN. How many are there?

Mr. FELDMAN. There are about 243 manufacturers.

The CHAIRMAN. How many employees?

Mr. FELDMAN. About 8,000 employees.

The CHAIRMAN. Are they organized in any labor organization of any kind?

Mr. FELDMAN. The upholsterers are organized.

The CHAIRMAN. The upholsterers are. Do you desire to submit your statement to the committee for printing in the record, or do you desire to read it to the committee?

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Mr. FELDMAN. I would be glad to do that if you wish, but I have just a few words I would be very glad to give you and the rest of the committee.

The CHAIRMAN. Very well. That will be very helpful.

Mr. FELDMAN. My brief is very short.

The CHAIRMAN. Very well, sir.

Mr. FELDMAN. I am here for the sole purpose to try in my humble way to show you that conditions which exist among our employees and also prevail in other furniture factories in Chicago are not as bad as some individuals contemplate are taking place.

I am representing my firm, with a capital of $1,369,000. We employ about 350 people and the first 3 months of this year our pay roll amounted to about $130,000. I am here also to represent and speak in behalf of the furniture manufacturers of Chicago.

I feel rather nervous in speaking before such a distinguished body of men and therefore hope you will bear with me for the time which was allotted to my talk.

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Our code provides for a minimum wage of 34 cents per hour. The average rate that our men earn who work in the finishing department and other departments is between 65 and 75 cents per hour. This also applies to other furniture industries in Chicago. If, as the result of the passage of this bill, our furniture factories are unionized and wages are raised higher than they are today and with materials going up, we will not be able to sell our products, and will be forced to close our factories, which means throwing thousands of people out of work.

I will give you an example of what happened over a year ago when a committee, consisting of three men, called to see me. One of the men introduced himself as a business agent representing the Cabinet and Carpenter's Union of America. These men told me that they wanted to organize our factory. My answer to this was that I would be very happy to allow them to go through our factory and talk to our employees.

One of my assistant's took those men through the factory so they could talk to the various and different people. I will give you an example as to what occurred when this business agent approached the first man and the rest of the men, and every one of them told him the experiences that they had had previously with unions, and that they preferred to be as they are because they are happy. The

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first one addressed said he worked for us for a number of years and that he was satisfiied and happy to work for our corporation. This business agent had the same reply after questioning about 40-odd people, and none of them were in favor of joining the union.

When the business agent came back to my office, he stated that inasmuch as I was in favor of organizing the factory he was very much surprised that the employees refused to join the union.

I will give you another example as to what happened in Chicago in the living-room furniture industry. They paid their employees a decent wage, but the manufacturers who make upholstered furniture were less fortunate than we were, and the labor officials were successful in organizing their employees. And what happened? Strike after strike. And this was against the will of the majority of the employes.

Several of the manufacturers are practically broke. Business in the furniture industry for the past 4 years has been very poor, all of us have had our hands full trying to keep our heads above water. We have had to sell merchandise very closely, and had a lot of grief in collecting our money after the merchandise was shipped. Then when trouble arose with the employees, which was caused by the outside instigators, it was the final blow that was struck to several manufacturers in our city as well as other cities throughout the upholstering line.

I could stand here and give you dozens of examples as to what happened in Chicago in the other industries which were organized by the American Federation of Labor.

We had for 3 months a good business from January up to date, and we are happy that we are able to employ men and women in our organization. We would like to continue and create new styles of furniture for the public. In doing this we will be able to employ men and women in our organization. This applies to other factories in Chicago.

If the Wagner bill, S. 1958, which is before you gentlemen, should be adopted and the so-called "labor deputies" are allowed to interfere and run our businesses which have taken years to build I prodict the passing of this bill will mean chaos to the furniture industry.

The CHAIRMAN. Will all those in the room who are representatives of the automobile industry stand? Who is the spokesman? You are, Mr. Graham? Will you come forward? All please remain standing so we can take your names.

STATEMENT OF ROBERT C. GRAHAM, VICE PRESIDENT OF THE GRAHAM-PAIGE MOTORS CORPORATION AND ALSO DIRECTOR OF THE AUTOMOBILE MANUFACTURERS ASSOCIATION

The CHAIRMAN. Will you give the reporter your full name?

Mr. GRAHAM. Robert C. Graham, vice president of the Graham-Paige Motors Corporation, of Detroit.

The CHAIRMAN. And who are you representing?

Mr. GRAHAM. I represent the Automobile Manufacturers Association. This organization comprises all of the major manufacturing companies in the automobile industry with the exception of the Ford Motor Co.

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The CHAIRMAN. Will you put in the record the name and the official position of each member of the industry who is here, commencing with this gentleman here, his full name and his position?

Mr. GRAHAM. Alfred P. Sloan, Jr., president General Motors Corporation; Alfred H. Swayne, vice president General Motors Corporation; Alvan Macauley, president Packard Motor Car Co., and president of the Automobile Manufacturers Association; A. J. Brosseau, president Mack Trucks, Inc.; B. E. Hutchinson, vice president and treasurer Chrysler Corporation; Norman Damon, of the Automobile Manufacturers Association; Herman Weckler, of the Chrysler Corporation; William Cronin, Automobile Manufacturers Association; H. W. Anderson, General Motors Corporation; Henry Hogan, General Motors Corporation; T. R. Dahl, vice president White Co.; and George H. Peterson, of the Graham-Paige Motors Corporation.

The CHAIRMAN. I assume the industry is unanimous in one thing, in its approval of the views you are going to present to us?

Mr. GRAHAM. I would say that it is so far as the Automobile Manufacturers Association is concerned. However, Senator, we are not able to speak for the Ford Motor Co.

Senator, I would like to ask permission to have Mr. John Thomas Smith, of General Motors, and Mr. Herman Weckler, of the Chrysler Corporation, to come up in case there would be some technical questions that I would not be able to answer.

The CHAIRMAN. You may both come forward, please, and take chairs near Mr. Graham.

I suppose in your statement you tell us in what form or character of organization now exists in the industry for the purpose of collective bargaining? You will deal with that, I suppose?

Mr. GRAHAM. I will cover that, Senator; and I would also like to say that I want to give an oral summary and then later file the completed brief.

The CHAIRMAN. How many employees are represented by this group who are appearing here this morning representing the industry?

Mr. GRAHAM. In the industry there are around a quarter of a million men. Of course, there are parts-manufacturing companies and others. If you took the entire industry from every standpoint you would find, for example, that it would be over 400,000 men.

The CHAIRMAN. But those who are appearing this morning have in their employ approximately 250,000 men?

Mr. GRAHAM. Yes, sir.

Senator and members of the committee, I would like to just take a few minutes' time to tell you what the automobile industry is doing in the aiding of recovery, because I think that what this industry has done surely merits the consideration of everyone.

Personally, I have had over 30 years now of manufacturing experience in the glass industry, and the truck-manufacturing business, and in the automobile business. I have loaded bottles in cars. I have worked in the packing room, and I have worked out in the field, and I have worked with the men in many different capacities, so I would not want it to appear that what I am saying would come from one who perhaps has just come into the manufacturing industry, or who had had relations with employees over just a short

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time, because ever since finishing college I have been shoulder to shoulder with my brother in this work.

I would like to have it understood that from our standpoint there has always been a fine, wholesome feeling for all of our employees, and I am sure it is equally true that that same kind feeling which we have had for our men they have had for us.

In regard to this industry, as you know, it is one of the youngest manufacturing industries in America. It reached the heights in 1928 of the great figure of 5½ million cars. And then came a number of years of depression that brought us down in the low period of 1932 to 1,200,000 cars.

This industry has tried to cooperate with the administration in every possible way. We supported the President's Reciprocal Tariff Act because we realized that if we could get our world trade back it would mean a tremendous aid toward recovery.

We showed in 1928 that over a million automobiles could be exported. And when we analyzed that million cars we found it meant 800,000 tons of steel, we found 5,000,000 tires, 2½ million square feet of glass, and 3½ million gallons of paint, besides the copper, leather, and other articles that went into the manufacture of the car.

In 1932, with that low figure of 1,200,000 we went up in 1933 to 1,800,000. In 1934 those figures rose to 2,800,000, and we are anticipating for 1935, providing nothing is done to upset the conditions of this country, the great figure of 3,500,000, not up to the figures of 1928, but a fine substantial progress that we are hoping to make. And this with an industry that has always paid for a major manufacturing industry the highest wages, an industry that has always believed in short hours. And anyone who has visited any of the automobile plants well knows that the working conditions are the finest in the world. And I have visited the plants in other countries, and I am safe in saying "in the whole world." We have gone along with a fine, happy feeling that this industry was able to pay fine wages.

We have gone along with the belief that we could have the finest working arrangement with our men in the world, that this new industry, comparatively new, of 25 years, for example, could do tremendous things, and it was with that feeling that we have gone through this depression, and it was with that feeling that we have tried to cooperate in every way.

I would like to read this oral summary and I hope that I won't take a lot of time.

The automobile industry believes this legislation to be altogether unnecessary and unwise. This industry in its industrial relations is already subject to Government regulation and supervision under methods imposed by the President of the United States. These relations during the past year have been conducted under the terms of this settlement.

This bill would also tend to destroy the basis of industrial relations upon which the automobile industry has been enabled for many years to expand employment, to pay high wages, to provide a wider market for its products, and to make an outstanding contribution to the industrial and social development of the country.

Instead of furthering the interests of American labor as a whole, this bill, whatever its declared purpose, appears to be really in the

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interest of a small minority represented by labor leaders who apparently seek legislative sanction of their efforts to dominate all American labor.

Our automobile industry, which is one of the largest manufacturing industries, insists on the principle that the labor employed in its plants be free to join or not to join any organization.

Merit, not membership in a union, should always be the basis of employment.

A man's labor affiliation or lack of any such affiliation, should have no more to do with his job than his religion or his politics.

We believe this is a fundamental American principle.

We are opposed to any legislation which deprives men of their inherent right to work regardless of the dictates of a labor organization.

We object to the proposed bill because we believe it violates that principle, and because it would disrupt the harmonious relations between employers and employees which have existed in this industry for many years.

Few, if any, American industries have been less troubled by labor disputes than the automobile industry.

It is our desire to maintain this condition in the interests of our employees as well as of the public, whose purchase of motor cars makes possible automobile employment.

It is our desire to keep this industry free of such disrupting influences as jurisdictional labor disputes which have been so largely responsible in other industries for strikes, warfare, stoppage of production, loss of wages, and destruction of property.

For years the American Federation of Labor leaders have sought to organize the automobile industry, but without success, because the great mass of employees refused to recognize the Federation as their spokesman, or to pay it dues.

No clearer indication of the wishes of the automobile workers could be found than the results of the recent elections in which the employees, by secret balloting conducted by a governmental agency, elected representatives for collective bargaining

As of March 20, 1935, out of 168,789 eligible voters, 85 percent voted, and of those voting only 7 percent favored the American Federation of Labor, and more than 70 percent voted no labor union affiliation.

The CHAIRMAN. Was that vote taken separately in each plant?

Mr. GRAHAM. Yes, sir.

The CHAIRMAN. By the employees in each plant?

Mr. GRAHAM. Yes, sir.

The CHAIRMAN. Was there a direct question put to the employees as to what form of labor organization they preferred?

Mr. GRAHAM. Yes, sir.

The CHAIRMAN. What was the form of ballot, do you remember?

Mr. WECKLER. The form of ballot gave the employees an opportunity to nominate a certain person for their representative. The ballot provided a space to write the man's name in and also a space for his affiliation.

The CHAIRMAN. But it did not put to the employee the direct question of what kind of labor organization he chose?

Mr. WECKLER. No, sir.

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The CHAIRMAN. And the reason why Mr. Graham has given us these figures is to show, because they were candidates of the American Federation of Labor, the noncandidates as representatives received that percentage of the vote, and all the other candidates received the larger percentage of 82 out of the whole number; is that correct?

Mr. WECKLER. In other words, 70 percent of the ballots were marked without any affiliation, and 7 percent of the ballots, as Mr. Graham has stated, were marked with an "A. F. of L." mark of nomination.

The CHAIRMAN. So that against the names of certain candidates of certain employees in the organization were the words "A. F. of L."?

Mr. WECKLER. That is right.

The CHAIRMAN. And against others what designation?

Mr. SMITH. The voter had to do his own designating. As was said, he said he wanted to vote for a certain man, and then he gave his affiliation.

The CHAIRMAN. Will you read again that statement of the ballot, the result of the ballots?

Mr. GRAHAM. As of March 20, 1935——

The CHAIRMAN (interposing). The election was held in all of the plants at the same time on the same day?

Mr. SMITH. No. Over a period of several months.

Mr. GRAHAM. Over a period.

The CHAIRMAN. Over a period?

Mr. GRAHAM. That is right.

Mr. WECKLER. These are cumulated figures?

Mr. GRAHAM. These are cumulated figures; yes, sir.

As of March 20, 1935, out of 168,789 eligible voters, 85 percent voted, and of those voting only 7 percent favored the American Federation of Labor, and more than 70 percent voted no labor union affiliation.

A great preponderance of workers have indicated a desire to be represented by fellow workers not affiliated with any organization, although members of 14 different labor organizations received votes in the recent elections to determine the representatives for collective bargaining. All groups are accorded proportionate representation in the newly-established bargaining agencies, and are met individually when they so request.

This bill does not give the employees any rights so far as collective bargaining is concerned that are not already granted by section 7 (a) of the National Recovery Act, but the act does endow the American Federation of Labor and other professional labor organizations with more effective means than they have ever had before to impose upon employees their domination as the collective bargaining agency.

Senator BORAH. Mr. Graham, in what respect does the bill do that?

The CHAIRMAN. You may answer that.

Mr. SMITH. May I answer?

Senator BORAH. Go ahead. We can proceed when we get to the other witness later.

The CHAIRMAN. No. He called these other witnesses to answer technical questions which might be asked him.

Mr. SMITH. May I answer?

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STATEMENT OF JOHN THOMAS SMITH, VICE PRESIDENT, GENERAL MOTORS CORPORATION

The CHAIRMAN. What is your full name for the record?

Mr. SMITH. John Thomas Smith is my name, Mr. Chairman.

The CHAIRMAN. You may answer Senator Borah's question.

Mr. SMITH. Because in the event of the present bill, or the proposed bill, going through, the question then would be, "What is a unit?" This bill proposes to authorize the labor board to determine the unit on an employer basis, on a plant basis, on a craft basis, or on any other basis.

Now, the difference between that scheme and the scheme that is operated in the case of the automobile industry is fundamentally this, the National Automobile Labor Board, under the terms of the Presidential settlement of last March, took plant by plant and roughly figured out, according to its size, there should be a bargaining agency consisting of 10 or 15, the idea being not to make this bargaining agency large, that it would be too bulky.

And then having made an examination of the fundamental conditions, whether with crafts, unskilled labor, skilled labor, whether they worked in one department or a lot of other departments, then with their own motion, without any consultation so far as management was concerned, fixed certain definite precincts. Then these precincts nominated certain candidates for this bargaining agency, and the two candidates that received the highest number of votes in what was equivalent to a primary on a subsequent date were elected, stood for an election, and the one that received the highest vote was selected, and that was the tentative bargaining agency. But in order to effectuate this proportional scheme and to protect minorities then the minorities that had not been successful in electing candidates, because somebody else got a higher vote, were given the right of representation. In other words, in a plant if the American Federation of Labor elected nobody, but had a third of the votes, then it would get a third of the representation on the bargaining agency, the theory being that the proportional theory in regard to representation, a minority instead of being frozen out, as is proposed by this bill, would have this additional protection. It would have some voice in the bargaining agency.

Now, in answer to the Senator's question, the difference between that scheme and the scheme of this bill in practices is that as the American Federation of Labor will not participate in that sort of an arrangement in practice, it means that when they are in the majority they will endeavor to coerce the management and the minority by one of the things permitted by the bill, in other words, to try to effect a closed shop by this agreement.

I take it that this bill is a step backward so far as 7 (a) is concerned, because 7 (a) provides that a man should not be discriminated against because he belongs to a union or because he did not belong to a union, and therefore that has thrown into legal doubt the validity of the so-called "closed-shop agreement" where some employers and employees prescribed a man must belong to a union as a condition of employment. And by use of that power that is granted by this so-called "majority agreement" in this bill the natural function of the organized-labor leaders would be where

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they are in a majority to demand that nobody could work unless he belonged to the union, but when they are in the minority then the thing does not function at all, because they do not propose to be outlawed, and in practice so long as they refuse to cooperate and always have the possibility of threatening a strike in the case of any discrimination against them, the practical result of this bill would be to disrupt your organization. In other words, the professional labor organization will respect the majority rule only when they are in the majority; when they are in the minority it does not work.

I am afraid that is a rather long answer, Senator.

The CHAIRMAN. I would like to ask about the agency which you have set up for collective bargaining. This agency to which you have referred was set up as the result of a Presidential order or agreement entered into by the leaders in the industry with the President?

Mr. SMITH. Yes, Mr. Chairman; in March a year ago.

The CHAIRMAN. Is that order in writing?

Mr. SMITH. Yes, sir.

The CHAIRMAN. And it can be put in the record, of course, during the proceedings?

Mr. SMITH. Yes, sir. We would like to have it in.

The CHAIRMAN. Now, briefly stated, just what does it provide, namely, in what way do you proceed to give your employees opportunities for engaging in collective bargaining agreements?

Mr. SMITH. I think this is the way——

The CHAIRMAN (interposing). First of all—pardon me—you deal plant by plant, or do all the employees in the entire number of plants work together?

Mr. SMITH. It is sectionally a plant matter.

The CHAIRMAN. Does each plant elect by secret ballot a representative or representatives?

Mr. SMITH. Yes, sir.

The CHAIRMAN. And do they meet with their own employer, or do they meet with a committee of the employers of the entire industry?

Mr. SMITH. All of the industrial relations in the automobile industry are on the strict basis of employer and employee.

In other words, there are no general trade agreements in any way.

The CHAIRMAN. So that collective bargaining that is engaged in under this agreement is collective bargaining in each plant?

Mr. SMITH. In each plant.

The CHAIRMAN. Between the employer of that plant and his employees?

Mr. SMITH. Yes, sir.

The CHAIRMAN. Is that correct?

Mr. SMITH. Yes, sir.

The CHAIRMAN. Without regard to the collective bargaining which is going on in another plant?

Mr. SMITH. It is entirely apart.

The CHAIRMAN. In your plant, Mr. Smith, how many representatives have you?

Mr. SMITH. We have many plants. You see the General Motors Corporation has many plants all over.

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The CHAIRMAN. In each one of your plants you have a different number of representatives?

Mr. SMITH. They are different in number. There is one that has 7, one 10, one 15, and so forth, in the other large plants, for instance, the Dodge plant. And the Chrysler Co., a very, very large plant, has as high as 53.

The CHAIRMAN. Fifty-three?

Mr. SMITH. The number of representatives is conditioned upon the number of employees that are in the group.

The CHAIRMAN. At these elections these representatives meet among themselves to hear grievances and from time to time present them to the management?

Mr. SMITH. Yes, sir.

The CHAIRMAN. Who in the management do they present their grievances to?

Mr. SMITH. The various companies have various schemes. So far as the Chrysler Co. is concerned, I think they have a special committee.

The CHAIRMAN. From the management?

Mr. SMITH. From the management; yes.

The CHAIRMAN. Yes.

Mr. SMITH. And they sit down——

The CHAIRMAN (interposing). With the representatives?

Mr. SMITH. With the members of the bargaining agency.

The CHAIRMAN. Yes.

Mr. SMITH. And they discuss the matters in interest.

So far as the General Motors is concerned, we adopted a different policy. We designate somebody in every plant, who is the contact man, to take up with the representatives of the workers the various questions, and we have a very elaborate system too, which gives the worker, in the individual worker, or any other worker, the right to present any grievance or claim in the regular course of events through the foreman, and up to the highest executives of the corporation. And that is embodied in a printed procedure that has been mailed to every one of our workers. So that any worker in the General Motors Corporation has a right to lay his grievance through successive stages up to the head of the corporation.

The CHAIRMAN. What, if any, financial assistance, or what, if any, financial aid is given by the management to these representatives?

Mr. SMITH. These representatives have not gotten over that hurdle. So far as these representatives are concerned, I think it is only fair to say that the management had nothing to do with these elections.

The CHAIRMAN. We understand that.

Mr. SMITH. They were not asked and they had nothing to do with laying out the precincts. They had nothing to do in regard to compensation. The responsibility for the entire set-up rested on the Automobile Labor Board. Now, immediately after the elections were held the labor board held conferences with these representatives of the workers in order to try to more or less feel their way, because this collective bargaining is a new field, and the thought was that they ought to try to patiently work out something. And they are still in the formative stage.

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The CHAIRMAN. Who appointed the Labor Board?

Mr. SMITH. The Labor Board was appointed by the President of the United States.

The CHAIRMAN. Did that continue to function after the elections?

Mr. SMITH. That is functioning.

The CHAIRMAN. Is it functioning now?

Mr. SMITH. And is functioning still.

The CHAIRMAN. Are appeals made to them when the management and the employees' representatives are unable to agree?

Mr. SMITH. Yes, sir; that is the normal function, and has been ever since March.

The CHAIRMAN. They have the final say in determining the differences between employees and the management?

Mr. SMITH. Yes. One of the unique things of this automobile settlement is that the determinations of this Board shall be final. In other words, unlike the proposed board here.

The CHAIRMAN. It is the only such Board in the country, I believe?

Mr. SMITH. Sir?

The CHAIRMAN. It is the only such Board in the country, I believe?

Mr. SMITH. I think it is the only one where we agreed in advance to the finality of it.

The CHAIRMAN. Yes.

Mr. SMITH. And, therefore, it is also interesting to observe——

The CHAIRMAN (interposing). Suppose your employees do not accept the judgment of this Board, what can you do about it?

Mr. SMITH. What can we do? Of course, we have no control over the employees, Mr. Chairman. We have to go along and do the best we can. We have to abide by a lot of the decisions of this board that we do not think are right, but still in a situation of this kind we have to abide by them.

The CHAIRMAN. Coming back to this one question, and then I will drop my inquiry. In what manner are these representatives of the employees compensated?

Mr. SMITH. So far as my information goes, the question of compensation has not been worked out. There have been discussions between these gentlemen of the labor board, and there has been so far as I know no rule laid down by the labor board in reference to this question of compensation, because the men themselves are somewhat bothered by it, and because there is a question, for example, where bargaining agents during the regular working hours are discussing problems with the management, and I would say that the general feeling of the management as I know it and of the workers is that it would be most unfair to penalize these representatives by making them lose time which it is true was taken from their regular work, but which was devoted to work of very much more importance perhaps than their regular work. And my own individual opinion is that that certainly is the very least that a representative worker would be entitled to get because of his contribution to this question of employment.

The CHAIRMAN. Nothing in this bill objects to that.

Mr. SMITH. Yes; this bill as——

The CHAIRMAN. On this first?

Mr. SMITH. No; except I——

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The CHAIRMAN (interposing). There were cases brought to our attention yesterday where there was a lump sum given these representatives, $25 a week, regardless of the time to be spent. I think such cases would not probably come within the provisions of this bill.

Mr. SMITH. Of course, this is as I say too formative yet. The board has not hardened, because I think that the labor board has not been willing to say that this contribution is right and this one is wrong, and we have taken the persuasive position that that is something that the board ought to determine.

The CHAIRMAN. I think we have a general understanding of the set-up.

You may proceed, Mr. Graham.

Mr. GRAHAM. We believe that any bill which purports to prevent unfair labor practices on the part of employers should likewise prohibit unfair labor practices on the part of labor organizations, which often take forms not amenable to existing criminal or other legal control.

There is no provision in this bill which would protect employer and employees who in good faith cooperate with the Board set up by the Government against labor organizations that are unwilling to abide by an adverse decision.

In the Real Silk Hosiery Mill the National Labor Board held an election at the request of the company, and in accordance with an agreement made between the employer, the Board. the employees' representative plan, and an outside labor union.

The election was held under the auspices and direction of the Board and resulted in a decision in favor of the employees representation group.

The organized union, which had only a small minority of the employees as members, having lost the election, breached its agreement and called its members out on strike, tying up the plants for 7 weeks.

It is clearly the purpose of the bill to vest labor organizations with greater powers, and, in view of this fact, it becomes essential that these organizations be compelled by law to change their structure from the existing loosely organized voluntary association to a duly incorporated organization which, together with its directors. officers, agents, and members, is answerable in law for its acts, and which can be held liable on agreements made by it or in its behalf.

Labor organizations should be required to adopt and use sound accounting methods, subject to examination by appropriate public authority as to all funds received and disbursed. Certainly no organization should be given the rights accorded by this bill, without being held strictly accountable and responsible for the exercise and results of such rights, and without being subject to the jurisdiction and to the orders of our courts.

The one-sided character of this legislation is indicated by the restraints placed upon employers as against the lack of any restraint whatsoever upon labor organizations.

It is only fair, when a law restricts one party, that it also restrict other parties involved.

Section 8 of the act is the "closed-shop" section. It provides that nothing in the act shall preclude an employer from making an agreement with a labor organization to require as a condition of

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employment membership in such labor organization if it represents a majority of employees. This section does not work both ways. If any other organization than a union organization becomes a representative for collective bargaining, and the union is of the opinion that a strike will not carry out its purposes, it will, no doubt, object to the contract on the ground that the closed-shop agreement was made with an ineligible representation group. The Labor Board will probably hear the case and, following its usual practice, conduct another election, and might possibly conduct one after that until the union is satisfied. There would be a vociferous protest if the employer closed his shop against union members, although the majority of employees prefer nonunion representation, but if the employer closed his shop against nonunion men, the employer would receive the praise of unions everywhere.

We wish to call attention to several specific features of the proposed measure. Take, for example, the definition of the term "employee", as stated in paragraph (3) of section 2 of the bill. It reads:

> The term "employee" * * * shall not be limited to the employees of a particular employer unless the act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice.

It is an open invitation to employees in plants wholly unrelated to a particular plant where no difficulties exist to stir up trouble in that plant. It encourages agitators everywhere to foment sympathetic strikes.

The CHAIRMAN. It has been suggested that that definition of "employee" should be modified so as to exclude an employee who is out on strike, who had committed acts of violence.

Mr. GRAHAM. I certainly think that should exclude a man on the outside.

The CHAIRMAN. You think that, at least, should be done?

Mr. GRAHAM. Sir?

The CHAIRMAN. You think that, at least, that should be done?

Mr. GRAHAM. Yes, sir. Secondly, the bill's definition of a "labor dispute" is also an invitation to those outside of a particular plant, having no relationship whatever to that plant, to foment trouble. Paragraph (9) of section 2 reads:

> The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment * * * regardless of whether the disputants stand in the proximate relation of employer and employee.

It is our desire to keep this industry free of interference by agencies and organizations which have ulterior interests to serve other than the interests of our own companies, their employees, and the public.

Third. The bill, in paragraph (4), section 2, defines "representatives" as follows:

> The term "representatives" includes any individual or labor organization.

An employee may designate as his representative a person associated with a labor organization; but if he designates a labor organization, he, in effect, designates the officers of the labor organization as they may be changed from time to time by the vote at the meeting of the labor organization, over which he has no control.

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A labor organization is generally made up of employees in several plants and not always in the same area. A labor organization might want to make an example of a particular plant by attempting to impose terms and conditions on that plant, but members of the union working in that plant would be powerless to prevent the union from going ahead on its program if the union could secure the votes of enough members who work in other plants.

The so-called "majority rule" in representation for collective bargaining is one of the most misleading phrases that has ever been injected into industrial relations.

It is contained in paragraph (a) of section 9 of this bill, which states:

> Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining.

In determining units for majority rule, the National Labor Relations Board is empowered to decide whether the unit appropriate for collective bargaining shall be "the employer unit, craft unit, plant unit, or other unit."

It is pertinent to inquire whether the American Federation of Labor, which appears as a sponsor of this bill, genuinely favors such majority rule in the automobile industry. If so, on the basis of the elections recently held in the automobile plants, they have no standing whatsoever.

We do not believe that the federation or this bill mean any such thing.

What is more likely is that the federation expects such units to be decreed as will enable it to force itself into the so-called "majority" position; and once it has attained that position, its next step undoubtedly will be to force the closed shop by the same methods.

The inquisitorial powers granted to the Board proposed in this bill would give it unlimited access to almost any company records it chose to pry into.

For example, paragraph (c) of section 10 provides that—

> Whenever there is a charge or the Board shall have reason to believe that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue * * *

Paragraph (1) of section 13 provides that—

> The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that related to any matter under investigation or in question.

This bill, in paragraph (2) of section 2, excludes "any labor organization, or anyone acting in the capacity of officer or agent of such labor organization" from any of the inquisitions to which employers are subjected by the bill.

The Board is given very broad and arbitrary powers to regulate employer-employee relationships. It is given the power of complainant, prosecutor, and judge, to mediate, conciliate, make inquiry on the complaint or information from any source, conduct trials without proper regard to the laws of evidence.

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This bill runs counter to the common-sense theory of mutual interest, which should exist between employers and employees in manufacturing operations.

The bill, in paragraph (2) of section 8 prohibits an employer from making an financial contribution or giving other support to an employees' organization. The only purpose of this section, as we see it, is to outlaw organizations of employees who do not choose to join so-called "recognized labor unions."

So far as elections to determine representatives for collective bargaining are concerned, there is no guaranty in this bill as to fairness and impartiality. The bill, in paragraph C of section 9 states that—

> The Board * * * may take a secret ballot of employees or utilize any other suitable method to ascertain such representatives.

The rule of "and other suitable method" is entirely too vague to be workable and is subject to grave abuse.

Apart from the above considerations, the Automobile Manufacturers Association believes this bill to be especially objectionable, because it would destroy the program designed to accord the workers in their plants full rights, including that of collective bargaining, which has been adopted by this industry and which is now being carried out in accordance with the terms of the President's settlement of March 25, 1934. Industrial relations in the automobile industry during the past year have been conducted under the terms of this settlement. The record of this relationship is set forth in detail in the report of the Automobile Labor Board to the President of the United States on February 16, 1935.

Under the terms of this settlement, all the employees in the industry have been accorded the right of collective bargaining, of freely choosing representatives for purposes of collective bargaining, of protection against discrimination, and of redress of their grievances under section 7 a of the National Industrial Recovery Act.

In announcing this settlement, the President stated emphatically that—

> The Government makes it clear that it favors no particular union or particular form of employee organization or representation. The Government's only duty is to secure absolute and uninfluenced freedom of choice, without coercion, restraint, or intimidation from any source.

The proposed bill is inconsistent with the principles enunciated by the President in his settlement, and in its operation of the bill would tend to disturb the peaceful relations which this settlement has established.

We do not beliew that it is the intention of Congress to repudiate the American principles of fair play embodied in the President's settlement, or to subject the industry and its employees to the agitation and struggle for political and economic power on the part of labor organizers among the automobile workers which would follow from the enactment of this bill into law.

I would furthermore just like to make a plea, in view of what I have stated at the beginning in regard to what this industry has done to aid recovery, that there are in America thousands and many thoustands of small, independent companies, some larger and some smaller than our own company, that have gone through this depression with a real strong heart, carrying on to help bring back prosperity to this country, and that the finances of these particular

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companies necessarily have been greatly depleted because of this world-wide economic depression.

We, therefore, ask particularly in the name of these smaller independent companies that have done so much to assist in aiding a recovery that nothing be done now to upset these fine relations that we think have existed between our men and ourselves, and which we feel sure will be the fine, wholesome feeling that has characterized that in the past. I thank you.

The CHAIRMAN. Is there a peaceful condition existing in the industry between its employees and the employers at the present time?

Mr. GRAHAM. Senator, I feel that there is. I talked to my brother just yesterday, who is at the plant, in order to be sure. I would not come down here with a statement, for example, that would not be absolutely straightforward. I called him up and he said there was no sign of any trouble in our plants. Now, I think if there had been any trouble, serious trouble, he would know about it.

The CHAIRMAN. So that this arrangement that was entered into by the industry and the President is apparently working satisfactorily and has prevented any strikes or threat of strikes?

Mr. GRAHAM. I certainly think so.

Senator BORAH. Up to this time?

Mr. GRAHAM. Yes, sir; I certainly think so, Senator Borah.

Mr. SMITH. There are a few minor ones.

Mr. GRAHAM. I am referring to our company. There is certainly none in ours, and I would know of any major ones.

Senator BORAH. Have you gentlemen raised any constitutional questions to some of the provisions of this bill?

Mr. SMITH. No, Senator. We have raised none because we take it that that is more or less of an old story as far as the committee is concerned.

Senator BORAH. The Constitution is getting a little jaded.

Mr. SMITH. Because everybody must wonder from a legal point of view as to the basis of the jurisdiction of the bill insofar as it affects the manufacturing industries, which, under a great many decisions of the Supreme Court, some of them fairly recent, it has been decided to be intrastate commerce rather than interstate commerce, and consequently outside of the jurisdiction of Congress, but we refrained from discussing any of those questions, leaving it——

The CHAIRMAN (interposing). That aspect of the bill has been presented to us by distinguished counsel.

Mr. SMITH (continuing). Because we thought that would be taken care of.

The CHAIRMAN. Mr. Graham, is there anybody else to appear this morning?

Mr. GRAHAM. No, sir.

The CHAIRMAN. There is nobody else appearing as representing the industry?

Mr. GRAHAM. No, sir.

The CHAIRMAN. You speak for all of the industry?

Mr. GRAHAM. Yes, sir; that is right.

The CHAIRMAN. Have you a brief in addition to your statement?

Mr. SMITH. Mr. Graham would like, I think, to file his brief.

Mr. GRAHAM. Yes; I would.

(The brief referred to is as follows:)

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MEMORANDUM ON THE PROPOSED NATIONAL LABOR RELATIONS ACT BY AUTOMOBILE MANUFACTURERS ASSOCIATION

The Automobile Manufacturers Association respectfully submits that the proposed National Labor Relations Act, S. 1958, instead of promoting industrial peace would provoke and invite industrial wars.

Instead of clarifying the industrial atmosphere this bill would still further confuse it.

Instead of encouraging employers and employees to settle their affairs amicably it would drive them farther apart.

Instead of helping toward further recovery, this bill, if enacted into law, would substantially impede it.

With this bill on the statute books industry throughout the United States can probably look forward to an epidemic of labor disputes.

So far as the automobile industry is concerned, this legislation is believed to be altogether unnecessary and unwise. This industry in its industrial relations is already subject to Government regulation and supervision under methods imposed by the President of the United States. This arrangement would be wiped out by this bill.

The automobile industry has made an outstanding contribution to the industrial and social development of this country. It is proud that its employees are the highest paid in the country and it has had up to date, relatively little industrial trouble. If this bill is passed insofar as this industry and industry generally are concerned, we can expect to see intensified, the following:

1. A drive by the American Federation of Labor to have itself declared the undisputed czar over industrial and clerical workers throughout the United States, and to force such workers to pay tribute to that organization in order to hold their jobs.

2. Unrestrained and unrestricted intimidation, violence, and other coercive methods against employees who refuse to join labor organizations and the intimidation of employers by references to the so-called "unfair labor practice clauses."

3. Attempts by the American Federation of Labor to impose a closed shop on all industry and make a union card a requisite for a man to earn his living.

4. An autocratic rule of a national labor board over American business with arbitrary powers of inquisition, with power to ignore rules of evidence, to base its findings on rumors and hearsay evidence and to violate other established constitutional safeguards which protect individual rights.

5. Advancement of the interests of labor leaders who apparently now seek legislative sanction of their efforts to dominate all American labor.

Take the definition of the term "employee" as stated in paragraph (3) of section 2 of the bill. It reads:

"The term 'employee' * * * shall not be limited to the employees of a particular employer unless the act explicitly states otherwise and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice * * *."

It is an open invitation to employees in plants wholly unrelated to a particular plant where no difficulties exist to stir up trouble in that plant. It encourages agitators everywhere to foment sympathetic strikes.

The automobile industry insists on the principle that the labor employed in its plants be free to join or not to join any organization.

Merit, not membership in a union, should always be the basis of employment.

A man's labor affiliation or lack of any such affiliation should have no more to do with his job than his religion or his politics.

We believe this principle is a fundamental American principle.

We are opposed to any legislation which deprives men of their inalienable right to work regardless of the dictates of a labor organization.

We object to the proposed bill because we believe it violates that principle and because it would disrupt the harmonious relations between employers and employees which not only have existed in this industry for many years, but also have proved to be generally satisfactory to the great mass of workers employed in it.

Few, if any, American industries have been less troubled by labor disputes than the automobile industry.

It is our desire to maintain this condition in the interests of our employees as well as the public whose purchase of motor cars makes possible automobile employment.

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It is our desire to keep this industry free of such disrupting influences as jurisdictional labor disputes which have been so largely responsible in other industries for strikes, warfare, stoppage of production, loss of wages, and destruction of property.

The bill's definition of a "labor dispute" is also an invitation to those outside of a particular plant having no relationship whatever to that plant to foment trouble. Paragraph (9) of section 2 reads:

"The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, * * * regardless of whether the disputants stand in the proximate relation of employer and employee."

It is our desire to keep this industry free of interference by agencies and organizations which have ulterior interests to serve other than the interests of our own companies, their employees, and the public.

The bill, in paragraph (4), section 2, defines "representatives" as follows:

"The term 'representatives' includes any individual or labor organization."

An employee may quite properly designate as his representative a person associated with a labor organization, but if he designates a labor organization, he, in effect, designates the officers of the labor organization as they may be changed from time to time by the votes at the labor-organization meeting, over which he has no control.

A labor organization is generally made up of employees in several plants and not always in the same area. A labor organization might want to make an example of a particular plant by attempting to impose terms and conditions on that plant, but members of the union working in that plant would be powerless to prevent the union from going ahead on its program if the union could secure the votes of enough members who work in other plants.

We do not believe that it is in the interests of our employees to give legislative encouragement to the sort of incidents that have occurred in San Francisco, in the coal fields, in the building trades, in the Chicago bus strike, in the textile mills, and in other situations in which attempted domination by labor union leaders has caused so much violent coercion and distress to the employees who wanted to work and to the general public.

For years American Federation of Labor leaders have sought to organize the automobile industry without success, because the great mass of employees refused to recognize the federation as their spokesman or to pay it dues.

No clearer indication of the wishes of the automobile workers could be found than the results of the recent elections in which the employees by secret balloting, conducted by a governmental agency, elected representatives for collective bargaining.

As of March 20, 1935, out of 168,789 eligible voters, 85 percent voted, and of those voting 7 percent favored the American Federation of Labor and 70 percent voted no labor affiliation.

A great preponderance of workers have indicated a desire to be represented by fellow workers not affiliated with any organization, although members of 14 different labor organizations received votes in the recent elections to determine the representatives for collective bargaining. All groups are accorded proportionate representation in the newly established bargaining agencies and are met individually whenever they so request.

The so-called "majority rule" in representation for collective bargaining is one of the most misleading phrases that has ever been injected into industrial relations.

It is contained in paragraph (a), section 9 of this bill, which states:

"Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining * * *"

In actual practice this means that the labor union accepts the majority rule where it happens to have a majority of the employees in its membership but is not bound by majority rule where the union is in a minority.

In determining units for majority rule, the National Labor Relations Board is empowered to decide whether the unit appropriate for collective bargaining shall be "the employer unit, craft unit, plant unit, or other unit."

It is pertinent to inquire whether the American Federation of Labor which appears as a sponsor of this bill genuinely favors such majority rule in the automobile industry. If so, on the basis of the elections recently held in the automobile plants, the Federation has no standing whatsoever.

We do not believe that either the Federation or this bill means any such thing.

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What is more likely is that the Federation expects such units to be decreed as will enable it to force itself into the so-called " majority position."

And once it has attained that position its next step undoubtedly will be to force the " closed shop " by the same methods.

National labor boards apparently find it difficult or seem to be unwilling to state or to interpret this so-called " majority rule."

The National Labor Relations Board evaded the question in the *Houde case.*

In the *Real Silk Hosiery case* described below, the employers of a majority of the employees found themselves helpless to prevent a small dissatisfied minority from tying up the plant for weeks.

This bill offers no protection to employer, employee, or the public on this score.

This bill does not give the employees any rights so far as collective bargaining is concerned that are not already granted by section 7a of the National Recovery Act, but the act does endow the American Federation of Labor and other professional organizers with more effective means than they have ever had before to impose upon employees their domination as their collective-bargaining agency.

In this respect this bill is class legislation of the worst kind because its effect is to discriminate in favor of the representatives of a minority of the class which the legislation purports to benefit as a whole.

Insofar as coercion and intimidation are concerned, the bill is wholly one-sided. It sets forth in detail in section 8 what are called unfair labor practices for an employer, but by its very silence lends encouragement to unfair labor practices on the part of labor organizations.

The bill says nothing whatsoever about discriminatory and unfair labor practices, restraint, coercion, or intimidation which are being practiced daily by many labor organizations and their paid organizers. As a matter of fact, the bill impliedly supports labor organizations in such practices.

In the *Real Silk Hosiery case* the National Labor Board held an election at the request of the company and in accordance with an agreement made between the employer, the Board, the employees representative plan, and an organized labor union.

The election was held under the auspices and direction of the Board and resulted in a decision in favor of the employees representation group.

The organized union which had only a small minority of the employees as members, having lost the election breached its agreement and called its members out on strike, tying up the plant for 7 weeks.

There is no provision in this bill which would protect employer and employees who in good faith cooperate with the board set up by the Government against labor organizations that are unwilling to abide by an adverse decision.

Witness the spectacle only a short time ago in the Supreme Court of Kings County, N. Y., of a labor union of dockworkers attempting to intimidate even the court.

After the court had announced its findings in support of the employer, the union announced the calling of a strike to tie up the piers in New York City, stating that it believed the decision was unfair and would not be bound by it.

We believe that any bill which purports to prevent unfair labor practices on the part of employers should likewise prohibit unfair labor practices on the part of labor organizations, which often take forms not amenable to existing criminal statutes or other legal control.

It is clearly the purpose of the bill to vest labor organizations with greater power, and, in view of this fact, it becomes essential that these organizations be compelled by law to change their structure from the existing loosely organized voluntary association to a duly incorporated organization which, together with its directors, officers, agents, and members, is answerable in law for its acts, and which can be held liable for agreements made by it or in its behalf.

Labor organizations should be required to adopt and use sound accounting methods, subject to examination by appropriate public authority as to all funds received and disbursed. Certainly no organization should be given the rights accorded by this bill without being held strictly accountable and responsible for the exercise and results of such rights and without being subject to the jurisdiction and to the orders of our courts.

The one-sided character of this legislation is indicated by the restraints placed upon employers as against the lack of any restraint whatsoever upon labor organizations. The theory, of course, is that employers are supposed to be protected by the common law.

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What protection does the common law offer to the employer against such coercive tactics as the flying motorcade used in the textile strike?

It is only fair when a law restricts one party that it should also restrict the other parties involved.

Recent history is full of evidence of labor's irresponsibility for the results of the exercise of its so-called "rights." For instance:

Jurisdictional disputes in the building trades have been both costly and vexing. Construction of the Federal Department of Labor Building has been jeopardized from time to time by jurisdictional disputes between rival unions. Building operations all over the United States have been similarly affected.

Violence in the Chicago motor-bus strike of last fall was such that three of the officers of the outside union, seeking to organize the company's employees, have been indicted for murder. And this strike grew out of the fact that the motor-bus employees voted under section 7 (*a*) of the National Industrial Recovery Act, to be represented by a company union instead of by the local union of the American Federation of Labor.

Last July a dispute arose in San Francisco between one union and shipowners concerning the method of hiring men. The parties were unable to compose their differences and the unions called a sympathetic strike of all union members in the area. Members of the unions disregarded their written closed-shop agreements and left their jobs pursuant to this general call to assist the particular union in intimidating and coercing the shipowners and the public.

The strike in the Kohler plants in Wisconsin last July was due entirely to the efforts of representatives of a minority of the employees, members of an outside union, to impose their union upon the majority of the employees in the Kohler plants.

The recent textile strike with its flying squadron of union organizers and pickets, illustrates the lengths to which labor unions go to force men to leave their jobs in a labor dispute.

This bill ignores labor union responsbility for coercion, intimidation, and violence such as have occurred on these occasions. The only restraints in the bill are those imposed upon employers who are held to strict accountability.

Section 8 of the act is the closed-shop section. It provides that nothing in the act shall preclude an employer from making an agreement with a labor organization to require as a condition of employment membership in such labor organization if it represents a majority of the employees. This section does not work both ways. If any organization other than a union organization became a representative for collective bargaining and the union was of the opinion that a strike would not carry out its purposes, it would no doubt, object to the contract on the ground that the closed-shop agreement was made with an ineligible representation group. The Labor Board would probably hear the case and conduct other elections until the union was satisfied. There would be a vociferous protest if the employer closed his shop against union members even though the majority of employees preferred nonunion representation, but if the employer closed his shop against nonunion men; the employer would receive the praise and adulation of unions everywhere.

The inquisitorial powers granted to the board proposed in this bill, would give it unlimited access to almost any company records it chose to pry into.

For example, paragraph (*c*) of section 10, provides that:

"Whenever there is a charge or the board shall have reason to believe that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, shall have power to issue * * *"

Paragraph (1) of section 13, provides that:

"The Board or its duly authorized agent or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question."

On the other hand the bill in paragraph (2) of section 2, excludes "any labor organization, or anyone acting in the capacity of officer or agent of such labor organization" from any of the inquisitions to which employers are subjected by the bill.

The Board is given very broad and arbitrary powers to regulate employer-employee relationships. It is given the power of complainant, prosecutor, and judge. It may mediate, conciliate, make inquiry on a complaint, or information from any source. It may conduct trials without regard to the rules of evidence.

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This bill runs counter to the common-sense theory of mutual interest which should exist between employers and employees in manufacturing operations. As stated by Federal Judge John P. Nields in the *Weirton case*:

"Manufacture is a cooperative enterprise. Production in quantity and quality with consequent wages, salaries, and dividends, depends upon a sympathetic cooperation of management and workmen. A relation acceptable and satisfactory to both workmen and management is an essential feature of the enterprise. If satisfactory the court will not disturb it. It is said this relation involves the problem of economic balance of the power of labor against the power of capital. The theory of a balance of power or of balancing opposing powers is based upon the assumption of an inevitable and necessary diversity of interest. This is the traditional Old World theory. It is not the twentieth century American theory of that relation as dependent upon mutual interest, understanding, and goodwill. Furthermore, the suggestion that recurrent hard times suspend constitutional limitations or cause manufacturing operations to so affect interstate commerce as to subject them to regulation by the Congress borders on the fantastic and merits no serious consideration."

This bill in paragraph (2) of section 8 prohibits an employer from making any financial contribution or giving other support to an employees' organization. The only purpose of this section as we see it is to outlaw organizations of employees who do not choose to join so-called "recognized labor unions." Some provision should be made to permit reasonable financial contributions to associations, subject to governmental regulation, if needed, to promote harmonious labor relations between employers and employees.

So far as elections to determine representatives for collective bargaining are concerned, there is no guarantee in this bill as to fairness and impartiality. The bill in paragraph (c) of section 9 states that:

"The board * * * may take a secret ballot of employees or utilize any other suitable method to ascertain such representatives."

The rule of any "other suitable method" is too vague to be workable and subject to grave abuse.

Apart from the above considerations, the Automobile Manufacturers Association believes this bill to be especially objectionable because it would destroy the program designed to accord the workers in their plants full rights, including that of collective bargaining, which has been adopted by this industry, and which is now being carried out in accordance with the terms of the President's settlement of March 25, 1934, which reads as follows:

"After many days of conferring in regard to the principles of employment in the automobile industry the following statement covers the fundamentals:

"1. Reduced to plain language section 7 (*a*) of N. I. R. A. means—

"(*a*) Employees have the right to organize into a group or groups.

"(*b*) When such group or groups are organized they can choose representatives by free choice and such representatives must be received collectively and thereby seek to straighten out disputes and improve conditions of employment.

"(*c*) Discrimination against employees because of their labor affiliations, or for any other unfair or unjust reason is barred.

"A settlement and statement of procedure and principles is appended hereto.

"It has been offered by me to, and has been accepted by, the representatives of the employees and the employers. It lives up to the principles of collective bargaining. I hope and believe that it opens up a chance for a square deal and fair treatment. It gives promise of sound industrial relations. It provides further for a board of three of which the chairman will as a neutral represent the Government.

"In actual practice details and machinery will of course have to be worked out on the basis of common sense and justice, but the big point is that this broad purpose can develop with a tribunal which can handle practically every problem in an equitable way.

"PRINCIPLES OF SETTLEMENT

"Settlement of the threatened automobile strike is based on the following principles:

"1. The employers agree to bargain collectively with the freely chosen representatives of groups and not to discriminate in any way against any employee on the ground of his union labor affiliations.

"2. If there be more than one group each bargaining committee shall have total membership pro rata to the number of men each member represents.

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"3. N. R. A. to set up within 24 hours a board, responsible to the President of the United States, to sit in Detroit to pass on all questions of representation, discharge, and discrimination. Decision of the board shall be final and binding on employer and employees. Such a board to have access to all pay rolls and to all lists of claimed employee representation and such board will be composed of—

"(*a*) A labor representative, (*b*) an industry representative, (*c*) a neutral.

"In cases where no lists of employees claiming to be represented have been disclosed to the employer, there shall be no basis for a claim of discrimination. No such disclosure in a particular case shall be made without specific direction of the President.

"4. The Government makes it clear that it favors no particular union or particular form of employee organization or representation. The Government's only duty is to secure absolute and uninfluenced freedom of choice without coercion, restraint, or intimidation from any source.

"5. The industry understands that in reduction or increases of force, such human relationships as married men with families shall come first and then seniority, individual skill, and efficient service. After these factors have been considered no greater proportion of outside union employees similarly situated shall be laid off than of other employees. By outside union employees is understood a paid-up member in good standing, or anyone legally obligated to pay up. An appeal shall lie in case of dispute on principles of paragraph 5 to the Board of Three.

"In all the hectic experience of N. R. A. I have not seen more earnest and patriotic devotion than has been shown by both employers and employees in the automotive industry. They sat night and day for nearly 2 weeks without a single faltering or impatience. The result is one of the most encouraging incidents of the recovery program. It is a complete answer to those critics who haye aserted that managers and employees cannot cooperate for the public good without domination by selfish interest.

"In the settlement there is a framework for a new structure of industrial relations—a new basis of understanding between employers and employees. I would like you to know that in the settlement just reached in the automobile industry we have charted a new course in social engineering in the United States. It is my hope that out of this will come a new realization of the opportunities of capital and labor not only to compose their differences at the conference table and to recognize their respective rights and responsibilities but also to establish a foundation on which they can cooperate in bettering the human relationships involved in any large industrial enterprise.

"It is peculiarly fitting that this great step forward should be taken in an industry whose employers and employees have contributed so consistently and so substantially to the industrial and economic development of this country in the last quarter century. Having pioneered in mechanical invention to a point where the whole world marvels at the perfection and economy of American motor cars and their wide-spread ownership by our citizens in every walk of life, this industry has indicated now its willingness to undertake a pioneer effort in human engineering on a basis never before attempted.

"In the settlement just accomplished, two outstanding advances have been achieved. In the first place we have set forth a basis on which, for the first time in any large industry, a more comprehensive, a more adequate, and a more equitable system of industrial relations may be built than ever before. It is my hope that this system may develop into a kind of works council in industry in which all groups of employees, whatever may be their choice of organization or form of representation, may participate in joint conferences with their employers and I am assured by the industry that such is also their goal and wish.

"In the second place we have for the first time written into an industrial settlement a definite rule for the equitable handling of reductions and increases of forces. It would be ideal if employment in all occupations could be more generally stabilized, but in the absence of that much desired situation, if we can establish a formula which gives weight to the human factors as well as the economic, social, and organizational factors in relieving the hardship of seasonal lay-off, we shall have accomplished a great deal. My view, and that of both employees and employers, is that we have measurably done so in this settlement.

"This is not a one-sided statute, and organization of employees seeking to exercise their representative rights cannot at the same time be unmindful of their responsibilities.

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"Industry's obligations are clearly set forth and its responsibilities are established. It is not too much to expect organizations of employees to observe the same ethical and moral responsibilities even though they are not specifically prescribed by the statute. Only in this way can industry and its workers go forward with a united front in their assault on depression and gain for both the desired benefits of continually better times."

Industrial relations in the automobile industry during the past year have been conducted under the terms of this settlement. The record of this relationship is set forth in detail in the report of the Automobile Labor Board to the President of the United States on Febuary 16, 1935, copy of which is attached for the information of the members of the committees of the House and Senate which are considering the proposed bill.

Under the terms of this settlement, all employees in the industry have enjoyed the right of collective bargaining, of freely choosing representatives for purposes of collective bargaining, of protection against discrimination, and of redress of their grievances under section 7 (a) of the National Industrial Recovery Act.

The proposed bill is inconsistent with the principles enunciated by the President in his settlement, and in its operation the bill would disturb the peaceful relations which this settlement has established.

We do not believe that it is the intention of Congress to repudiate the American principles of fair play embodied in the President's settlement or to subject the industry and its employees to the agitation and struggle for political and economic power on the part of labor organizers among the automobile workers which would follow from the enactment of this bill into law.

The CHAIRMAN. There are three gentlemen here representing the mining interests, Mr. Callahan, Mr. McAuliffe, and Mr. Allen. Will you all please come forward until we can get your names and then find out who will be the spokesman; who will be the spokesman of this group?

STATEMENT OF DONALD A. CALLAHAN, PRESIDENT CALLAHAN ZINC-LEAD CO., WALLACE, IDAHO, AND MEMBER OF THE BOARD OF DIRECTORS OF THE AMERICAN MINING CONGRESS

Mr. CALLAHAN. I have a statement to make, and I think Mr. Allen and Mr. McAuliffe probably have something to supplement it briefly.

The CHAIRMAN. Let us have your full name for the record.

Mr. CALLAHAN. Donald A. Callahan.

The CHAIRMAN. And your residence?

Mr. CALLAHAN. Wallace, Idaho.

The CHAIRMAN. And whom are you representing here, Mr. Callahan?

Mr. CALLAHAN. The American Mining Congress.

The CHAIRMAN. What is the membership of that body?

Mr. CALLAHAN. In numbers it represents approximately 90 percent of the mining industry in the country.

The CHAIRMAN. Mining of all kinds?

Mr. CALLAHAN. All branches.

The CHAIRMAN. Mining of all branches?

Mr. CALLAHAN. All branches; yes, sir.

The CHAIRMAN. You are yourself in the mining industry?

Mr. CALLAHAN. Yes.

The CHAIRMAN. Your company is the Callahan Zinc-Lead Co.?

Mr. CALLAHAN. The Callahan Zinc-Lead Co.; yes, sir.

The CHAIRMAN. Of Wallace, Idaho?

Mr. CALLAHAN. Of Wallace, Idaho; yes, sir.

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The CHAIRMAN. We would be pleased to have your views, Mr. Callahan.

Senator MURPHY. Where do you operate?

The CHAIRMAN. Yes; where do you operate?

Mr. CALLAHAN. At Wallace, Idaho.

Senator MURPHY. Are all of your properties there?

Mr. CALLAHAN. Yes, sir; the board of directors of the American Mining Congress has directed me to present to you a statement on behalf of the mining industry which it is organized to represent throughout the United States. Those charged with the responsibilities of management in our industry have considered at length and with care, the startling changes which it is apparently intended to bring about in the relation between employers and employees in the entire industrial structure of this Nation.

In the mining and attendant industrial enterprises of the United States, employment is given to a material proportion of the industrial workers of the country. Upon mining and its attendant industries, directly and indirectly, rests the welfare of about 25 millions of our population. We, therefore, ask your most careful consideration of this statement of position which we present as our firm and considered conviction in the vital matter before you.

The American Mining Congress at its annual meeting on December 14, 1934, adopted the following among other resolutions:

> We believe that labor should be given the right to representation in collective bargaining by those of its own selection; that the plan of proportionate representations of labor in any industry should be recognized; and that the right of the individual, not a member of a labor organization, to conduct bargaining by means of his own choice, shall not be restricted or abridged. We condemn any policy which shall constitute any labor organization, national or international, the sole representative of all those employed within an industry.
>
> Employees who desire to work should be fully protected by the police powers of constituted government and mob law should not be tolerated.
>
> We endorse the principle that every organization of employers and employees shall be made equally subject to public authority, legally answerable for its own conduct or that of its agents, and equally subject to judicial remedy.

We protest the passage of the National Labor Relations Act, S. 1958, for the following specific reasons:

First. Stripped of all camouflage, the bill is a deliberate attempt to fasten upon industry in this country a system of organized labor affiliated with the national labor organization known as the "American Federation of Labor."

Second. The bill deprives employers of the right to counsel and advise with their employees as to their method of organization for collective bargaining, or of considering the relationship which shall exist between employers and employees in any industry.

Third. The bill sets up a political board subject to influences which have no relation to the problems of industry and confers upon that board powers which rival those granted to the most autocratic bureaus of our present Government.

Fourth. The bill sets up a procedure violating the principles of the orderly adjudication of disputes as they have been recognized in courts of law, grants inquisitorial powers which unquestionably would become powerful agencies of persecution, and places employers, good and bad, upon the defensive in the operation of legitimate and honorable business.

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Fifth. The bill provides that representatives for collective bargaining "in a unit appropriate for such purpose" shall be chosen by a majority of all employees in such unit and shall thereafter be the exclusive representatives of all such employees. The "unit appropriate" is to be determined by the Board and the Board may also determine when and under what particular method such representatives shall be chosen. We have failed to find any limitation as to how often elections may be held, or as to how often the Board may change its mind as to the type of unit to be recognized.

To treat these objections seriatim: I know that it has been asserted and will be asserted again, that this bill is not in aid of what is known as "organized labor", but is intended purely to grant a freedom of organization to labor in order that it may treat collectively with employers. The picture of what this bill is intended to bring about has been painted most beautifully in this hearng, but I must beg leave to differ most decidedly and to assert that under the provisions of this bill there will be no company unions and that every liberty and opportunity will be given to paid organizers of federated labor to press into the ranks of their organizatons all employees in the Nation.

Consider the practical working of it: Men employed in a given industry who are not members of union labor and have no acquaintance with methods of organization, who perhaps have not seen any need of it in the past, once this bill has become a law, will have dinned into their ears continuously that it is the desire of the Government itself that they organize and treat with their employers in this manner. They canont even go to their employers for advice and counsel, because the employers will be obliged to tell them that under the provisions of section 8 of this bill it will be an unfair labor practice for them to "dominate or interfere with the formation or administration of any labor organization", et cetera. All the employers can do is to wait until the employees have organized, and then receive complaints if any are made.

But now along comes a labor organizer, representing a giant organization, spreading over the entire Nation, a secret oath-bound organization, if you please, with highly paid officials, district organizations, local unions, a headquarters at Washington, and, above all, a political influence which will be quite powerful with politically constituted authorities having to do with the administration of this act. It is represented by them that through payment of a nominal sum each month the employees of the industry can be organized, and all the strength and might of this tremendous national organization will be at the beck and call of the humblest employee. Perhaps in a state of perplexity the employee will go to his employer whom he has known for years and in whom he has the greatest confidence; he may ask his advice, but it cannot be given—the employer must stand aside and permit the agencies of organized labor to influence and even intimidate his employees with whom he has lived in harmonious relations for so long, and once that is done, the labor disputes envisioned by this act automatically arise.

Once the industry is organized the need is for action, and employees learn from experts just how many grievances they have which they never dreamed of before. It will be like reading the advertisement of a quack doctor and arising from such a study with the firm belief

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that one is in imminent danger of death. This then will be the first effect of the passage of this bill and it will be done upon the theory that employers of the country generally have been grinding down their employees, taking advantage of their necessities, and imposing onerous and unfair conditions.

I have not overdrawn the picture. These very conditions have been realized to an extent under the operation of section 7 (a) of the National Industrial Recovery Act; they will simply be accentuated in the event this bill is passed and the employer no longer has the right even to counsel and advise with his employees as to the methods of their organization. I say to you that the mining industry of this country does not deserve treatment such as will be imposed if this act becomes a law. It is an honorable business which has paid its employees well, striven to surround them with the greatest safety in a naturally hazardous employment, and provided working conditions which are superior to those found in any other country in the world. During the depression the mining industry has sacrificed much to provide a living wage for its employees. It seems to have earned along with all other employers of the country, perhaps the oppobrium of the Congress of the United States. If there is one dominant note which may be gathered from the entire contents of the bill which your committee has under consideration, it is the false note that employers need to be policed and restrained in their relations with their employees.

This bill sets up a political board. Its members are to be appointed by the President, subject only to the consent of the Senate. They may all be members of organized labor; they may all be employers; or even worse, they may all be men who have earned Government salaries in return for delivering political goods. In this, I am simply giving expression to a sentiment which has been impressed upon me by watching political events over a period of many years. Not only is the board to be political, but its employees likewise are to be political. There is to be no civil service in the administration of this act. The merit required of the employees, attorneys, experts, examiners, regional directors, and what not, is not be reckoned except upon the basis of political expediency or political service. In saying this I am merely taking into consideration the actual language of the bill itself. Any act providing for employment of public officials which places no restrictions upon appointment must be taken as providing for a personnel such as has followed from acts of a similar character.

Having created this political board, the bill goes on to confer upon it certain powers which, to use very mild language, must be considered extremely autocratic. First of all, the board will have authority from time to time to "make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of the act", and these rules and regulations shall be effective upon publication in the manner which the Board shall prescribe. I do not believe the members of this committee are naive enough to doubt that the first effort of this board will be to find many directions in which such broad powers can be exercised. It is the history of boards such as this, that they know no limitations and brook no interference. We will find this simple board of three coming to the Congress, year by year, with increasing demands for appropriations to carry out its

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far-flung activities and within a short time visitors to the Nation's capital will be pointed out another building filled to overflowing with Government employees engaged in the humanitarian business of keeping the employers of America from violating the four specific inhibitions contained in section 8 of this bill.

Just imagine what a wonderful opportunity there will be for new snooping and prying as the employees of this inquisitorial body go about performing the duties enjoined under section 13 of the act. I ask you in all seriousness, if the honest and conscientious employers of this country, whose name is legion, deserve of the Congress of the United States a measure such as this, which will subject them at all times to inquisitions such as can be conducted under the provisions of this act?

Then again, what about the hearings themselves, where no rules of evidence are to bet taken into account; where hearsay, rumor, or inuendo are to be received and considered on the same basis as statements of fact by witnesses. What about the provision of making a finding of fact based upon such a hearing binding upon a court of law to which the controversy may finally be transferred? What about the power granted to summon a defendant from Maine to California upon a 3-day notice? Surely it is not the intention of the Congress of the United States to crucify all industry because in some instances employers have not dealt fairly with their employees.

It has been said that this bill provides for the rule of the majority and surely that is a good American doctrine. It is, indeed, where opportunity has been given to lay facts before those who are to do the voting. Even in this country I do not think much of the decision of a majority where there has been no honest and free discussion of the issues which are to be decided. In this case, the employer must stand helplessly by, see the paid and expert organizers of labor present their glowing picture of advantages to be gained and then, when but one side of the issue has been presented, abide by the decision of a majority which binds the minority, regardless of its desires. In the language of the resolution of the American Mining Congress, we urge "that the plan of proportionate representation of labor in any industry should be recognized", and that 49 percent, or any other percent of employees should be permitted to do more than simply "present grievances" to their employers. Other spokesmen before your committee have presented this phase of the subject in an able manner. We of the mining industry ask you to give it careful consideration.

Let me conclude by pointing out to this committee the very grave danger of the precedent which may be here established. For years we have heard the complaint of organized labor, that it has been discriminated against politically. It is only within the past few years when abnormal economic conditions brought about an abnormal political sentiment that we have seen organized labor riding the waves of political recognition. The pendulum has swung so far that the small body of men compactly organized in the American Federation of Labor have been able to see realized their dreams of increased membership through their representation that the policy of Government was favorable to their organization. That pendulum may swing backward just as far as it has swung for-

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ward. Changing economic and political conditions may bring about the organization of the board, provided in this bill, upon a basis not only not favorable to, but violently opposed to organized labor. Is organized labor ready to accept the implications of such a change in conditions? Is it ready to accept the autocratic domination of a political board such as is provided in this bill, when the personnel of that board may be entirely unfavorable to its ideals? I point this out merely to remind you that you are establishing here a precedent, that you are writing into the law of the land a policy on the relationship between employer and employee, and that this policy is not written for today or tomorrow, but is to have a definite place in the economic and social structure of the Nation for years to come. This bill is not being considered as an emergency measure—it is a bill aimed to determine differences and disputes arising in one of the most intimate relationships existing among our people; it is to be a policy which will change in its administration as conditions change politically and otherwise, and I for one, as an employer and a citizen, don't wish to see such a question raised as a political issue in this country.

I ask you members of this committee, charged with a very grave responsibility, to consider the full consequences for the future as well as for the present of the action which you are asked to take in considering this bill.

May I have Mr. R. C. Allen address you briefly?

The CHAIRMAN. Mr. Allen, you may take the stand.

Mr. CALLAHAN. Also, I wish to leave with the committee telegrams received from the industry throughout the country.

The CHAIRMAN. How many of them are there, Mr. Callahan?

Mr. CALLAHAN. Quite a number.

The CHAIRMAN. Several hundred, would you say?

Mr. CALLAHAN. There are probably not that many, but there are 75 perhaps.

The CHAIRMAN. The clerk will take possession of the telegrams. You might put a few of them in the record as typical.

Mr. CALLAHAN. All right. I shall try to select some.

(The telegrams referred to are as follows:)

WALLACE, IDAHO, *March 25, 1935.*

JULIAN D. CONOVER,
Secretary, American Mining Congress,
Washington, D. C.:

We are opposed to the Wagner Labor Relations Act. The powers to be conferred on the proposed National Labor Relations Board exceed what is required to secure fair treatment of labor. Collective bargaining by a bare majority is unfair to those who do not belong to national labor organizations and who do not desire to join such organizations. We believe no person nor committe nor organization has a right to contract for the terms of employment of a third party without the third party's consent. There should be no monopoly of collective bargaining. The bill adopts the false theory that coercion comes only from management. Passage of this law will permit the creation of the greatest political and financial trust ever known.

HECLA MINING CO.,
JAMES F. MCCARTHY, *President.*

CALUMET, MICH., *March 26, 1935.*

AMERICAN MINING CONGRESS,
Washington, D. C.:

This company is unequivocally opposed to such legislation as is proposed in the Wagner Labor Relations Act, believing that it is just as unfair to labor

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as it is to industry and that, further, it will tend to destroy in this community the faith and confidence between workers and management built up by years of understanding. We fully endorse the program of the American Mining Congress in this matter.

CALUMET AND HECLA CONSOLIDATED COPPER CO.,
JAMES MACNAUGHTON, *President.*

SILVER CITY, N. MEX., *March 24, 1935.*

JULIAN D. CONOVER,
Secretary American Mining Congress,
Washington, D. C.:

The mining industry as a whole, and particularly in this locality, has failed to achieve anything like a return to normal. Relations here between labor and capital here have for the most part been amicable. The passage of the so-called "Wagner bill" could and would only tend to disturb the peaceful relations heretofore obtaining in this district. As it is, few companies are operating and we feel that the passage of the Wagner bill would tend only to incite dissension and distrust between labor and capital, thus retarding the return to normal. We therefore ask that you represent to the committee that the mining industry in New Mexico is opposed to the passage of this bill.

NEW MEXICO CHAPTER AMERICAN MINING CONGRESS,
J. F. WOODBURY, *Secretary.*

GALLUP, N. MEX., *March 23, 1935.*

JULIAN D. CONOVER,
Secretary American Mining Congress,
Washington, D. C.:

The Wagner labor relations bill, if enacted, would be a national economic calamity and an insurmountable obstacle to the return of prosperity. Instead of helping to promote industrial peace, its practical result would surely be further disturbances of conditions, which at the present time are very unsettled, and neither the employee or employer has a feeling of security. The coal industry is now having an exceedingly difficult task in continuing operations, and to be further burdened with the regulations in the Wagner bill would cause additional unrest and expense that will make it almost impossible for many of the mines now operating to continue. The objectionable features which caused the defeat of the old bill have not been eliminated in the new bill. The pending bill gives the majority representatives the exclusive right to represent all of the employees in a unit in collective bargaining, leaving to the minority or the individual only the hope of presenting grievances but without the right to make any bargain about them. Furthermore, it leaves to the proposed Labor Board itself the right of selecting representtives by any method it sees fit, with the proviso that it may have those representatives chosen by secret ballot, but it is not required to do so. The bill does not in express terms impose a closed shop, but it does in express terms authorize it, and its practical application would undoubtedly result in a closed shop. This feature is exceedingly objectionable, as at many operations, including our own, many of the employees object to joining a labor organization and insist that the right of individual representation be retained. The proposed act would practically force the closed shop upon all industry and would cause endless strife in the coal industry in this section of the country. We sincerely hope that you or your representatives will appear before the Senate committee and protest passage of the Wagner labor relations bill by every means at your command.

HORACE MOSES,
General Manager, Gallup American Coal Co.

HURLEY, N. MEX., *March 25, 1935.*

JULIAN D. CONOVER,
Secretary American Mining Congress,
Washington, D. C.:

The passage of the Wagner Labor Relations Act, instead of promoting industrial peace, will surely further intensify labor difficulties and most seri-

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ously retard the return of a reasonable measure of prosperity. The bill authorizes closed shop, and its practical application would undoubtedly result in closed shop and thereby unquestionably tend to deprive a workman of his constitutional rights and privileges and compel him to pay tribute to others in order to secure employment. The measure imposes heavy penalities on employers for merely discussing with employees the subject of labor organization or for any interference with the activities of paid troublemakers or even of alien and other anti-American agitators or for taking any steps at all to protect themselves against persons attempting to disrupt satisfactory relationships between them and their employees, but does not prohibit representatives of outside unions from enticing or even coercing employees to join their organizations and select such organizations as their representatives for collective bargaining, thus interfering with the employees' freedom of choice both as to union affiliation and selection of representatives. This would be a one-sided law, designed to place the union minority in control without imposing upon it any responsibility whatsoever for its actions, and by placing in the hands of such minority the power to control the action of all others it becomes contrary to the principles of freedom upon which this Government is founded. I am convinced that the passage of this Wagner bill would be a national economic calamity.

R. B. TEMPEST,
General Manager, Chino Mines Division, Nevada,
Consolidated Copper Corporation.

NEW YORK, N. Y., *March 25, 1935.*

JULIAN D. CONOVER,
Secretary American Mining Congress,
Washington, D. C.:

Anthracite industry opposed to Wagner Act. Include us in any statement you submit.

ANTHRACITE INSTITUTE,
LOUIS C. MADEIRA, *Executive Director.*

PICHER, OKLA., *March 26, 1935.*

JULIAN D. CONOVER,
Secretary American Mining Congress,
Washington, D. C.:

Consider proposed Wagner Labor Relations Act very undesirable. Legislation certain to further increase labor disputes and react against industrial recovery. Industry needs to be let alone, unhampered now by reform legislation. Tri-State mining industry is vigorously opposed to this and any similar legislation which would give another Government board drastic powers affecting private industry.

M. D. HARBAUGH, *Secretary.*
TRI-STATE ZINC & LEAD ORE PRODUCERS ASSOCIATION,

SALT LAKE CITY, UTAH, *March 25, 1935.*

J. D. CONOVER,
American Mining Congress,
Munsey Building, Washington, D. C.:

Please have our group of metal mines placed on record in vigorous opposition to the so-called "Wagner Labor Relations Bill." Our industry in this field has experienced unusually satisfactory relations between employees and employers for many years past. We have cooperated fully in all governmental programs for recovery and in many instances have assumed substantial losses to do so. Some of our mines have maintained employment at more than 80 percent of normal throughout the depression period and the industry as a whole in this State has maintained employment and pay rolls at from 40 to 60 percent in excess of the extent and amount indicated by production and sales value of ores.

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This has been made possible only through sacrifice of capital assets and cash reserves. Market situation of our principal products and prolonged dissipation of our reserves make it increasingly difficult to maintain program we have been following for past several years and additional factors beyond our control such as proposed by Wagner bill cannot fail in our judgment to result in decreased operations. Furthermore, we wish to stress the fact that this industry is meeting constantly increasing competition from production in foreign countries where costs are substantially lower than here and this condition will be intensified to the great loss of American workmen and American producers if the industry in the United States is subjected to the onerous restrictions proposed in this bill. Majority representation provision of bill is an invasion of the right to work and of individual freedom of action. Authority proposed to be given to permanent Labor Relations Board constitutes a dictatorship which men accustomed to the reasonable enjoyment of individual liberty will not permanently endure and which owners of property will endure only until they can employ their capital otherwise. We believe the Wagner bill is a deflationary measure and that its passage will greatly retard recovery in this industry and will complicate and impede operations as long as the bill remains in effect. Following companies which produce more than 90 percent of all the metals mined in Utah with substantial production in other States join in this statement: Bluestone Lime & Quartzite Co., Bristol Silver Mines Co., Chief Consolidated Mining Co., Combined Metals Reduction Co., Daly Mining Co., Eagle & Blue Bell Mining Co., Eureka Lilly Mining Co., Eureka Standard Mining Co., Lewiston Peak Mining Co., Manning Gold Mines Co., Montana Bingham Consolidated Mining Co., Mountain City Copper Co., North Lily Mining Co., Niagara Mining Co., Ontario Silver Mining Co., Park City Utah Mines Co., Park Utah Consolidated Mines Co., Plutus Mining Co., Silver King Coalition Mines Co., W. F. Snyder & Sons, Tintic Standard Mining Co., Utah Copper Co., Utah Delaware Mining Co., Walker Mining Co.

UTAH CHAPTER AMERICAN MINING CONGRESS.

HARTFORD, CONN., *March 28, 1935.*

Senator DAVID I. WALSH,
United States Senate Building:

Colt Patent Firearms Co. workers on strike to enforce section 7A. Company has lost Blue Eagle. Company intimidating workers by sending officials to their homes and providing sleeping quarters in factory. Appreciate your cooperation with President Green and Senator Nye to see that some appropriate action is taken by our Government to make this company observe the law.

FRANCIS P. FENTON,
New England Represenative American Federation of Labor.

GARY, IND., *March 29, 1935.*

Hon DAVID I. WALSH,
United States Senate:

As chairman of employees' representatives Gary Sheet Mill, it is my belief that the Wagner labor disputes bill will create industrial strife. We can see no benefits and many disadvantages for honest industrious mill men in this piece of proposed legislation.

CLYDE KYLE,
449 Buchanan Street, Gary.

GARY, IND., *March 29, 1935.*

Hon. DAVID I. WALSH,
United States Senate:

The employees' representation plan has given us a satisfactory medium for collective bargaining with our employees, Gary Sheet Mill, American Sheet & Tin Plate Co. We view with alarm the destructive effect the Wagner bill will have on our friendly relations and protest against its passage.

ALAN NORMAN, *Rural Route 1, Gary, Ind.*

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GARY, IND., *March 29, 1935.*

Hon. DAVID I. WALSH,
United States Senate:

As employee representative of hot mill employees, Gary Sheet Mill, I wish to protest the passage of the Wagner labor disputes bill, S. 1958, as being destructive to the satisfactory plan we now have for collective bargaining.

THOMAS NELSON, *Gary, Ind.*

GARY, IND., *March 29, 1935.*

Hon. DAVID I. WALSH,
United States Senate:

The Wagner labor disputes bill will cripple or destroy our employees' representation plan which has proved a satisfactory method of collective bargaining with our employer, Gary Sheet Mill. As representative of finishing department employees, I ask you to prevent its passage.

DANIEL GLIGOR, *Gary, Ind.*

BUFFALO, N. Y., *March 29, 1935.*

Hon. DAVID I. WALSH,
Chairman Senate Committee on Education and Labor:

Referring to the resolution opposing the Wagner bill, S. 1958, passed by the employee representatives of the Bethlehem Steel Co., Lackawanna Plant, Lackawanna, N. Y., copy of which we mailed you on March 27, we respectfully request that this resolution be recorded in the record of the hearings being held by your honorable committee on this bill.

E. B. EVANS,
Chairman Employee Representatives.
WILLIAM COUHIG,
Vice Chairman Employee Representatives.
THOS. J. KINSELLA,
Secretary Employee Representatives.

WARREN, OHIO, *March 29, 1935.*

Hon. DAVID I. WALSH,
Senate Office Building, Washington, D. C.:

In re the Wagner labor relations bill, I believe that the best interests of workers will be served if present harmonious relations now existing between employer and employees be not disturbed. Enactment of the Wagner bill will seriously upset present satisfactory working conditions and promote hard feelings and misunderstandings where cooperation is so much needed to increase employment and improve general conditions in behalf of our organization and 700 workers. Respectfully request that you vigorously oppose the passage of the Wagner bill.

CHARLES A. MORROW,
Executive Vice President the Youngstown Pressed Steel Co.

WARREN, OHIO, *March 29, 1935.*

Hon. DAVID I. WALSH,
Senate Office Building, Washington, D. C.:

In your consideration of the Wagner labor relations bill, we respectfully direct your attention to the harmonious relations today existing between workers and employees in the thousands of plants in this country. This is the result of many years of close cooperation, and certainly assists greatly in promoting the interests of both and in solving also many local problems and undertakings for the benefit of the community. Generally business conditions will improve only as employment is maintained and increased to the satisfaction of all. I believe the Wagner bill if enacted will very seriously upset present employment conditions and respectfully request that you oppose its enactment.

A. J. WATSON,
Secretary the Youngstown Pressed Steel Co.

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OMAHA, NEBR., *March 28, 1935.*

Hon. DAVID I. WALSH,
Chairman Committee on Education and Labor,
United States Senate, Washington, D. C.:

Please be informed that we object to passage of Wagner bill because of section 8, paragraph 2, lines 20 and 21, "or contribute financial or other support to it,", and section 9, paragraph B, which will interfere with entirely satisfactory functioning of present company union. Sender represents entire commercial employee body in Nebraska, South Dakota, North Dakota, Minnesota, and Iowa.

H. T. SHEARER,
General Chairman Commercial Employees Representation Plan,
Northwestern Bell Telephone Co., Omaha, Nebr.

FARRELL, PA., *March 28, 1935.*

Hon. DAVID I. WALSH,
Chairman Senate Committee on Education and Labor,
Washington, D. C.:

I am opposed to the Wagner bill. Have been a mill man for over 43 years and feel that this bill, if passed, would be detrimental to our present working conditions.

WILLIAM BUCKER,
Mill Worker, American Sheet & Tin Plate Co.

FARRELL, PA., *March 28, 1935.*

DAVID I. WALSH,
Chairman Senate Committee on Education and Labor,
Washington, D. C.:

Have been a steel worker for 35 years and am not in favor of Wagner bill

M. C. DEWITT,
AMERICAN SHEET & TIN PLATE CO.

SOMERVILLE, MASS., *March 28, 1935.*

Senator DAVID I. WALSH,
Washington, D. C.:

Your support of the Wagner labor dispute bill, S. 1958, also Black 30-hour-week bill, S. 87, will be very much appreciated by all members of Lodge 301, International Association of Machinists of Boston. All the members are voters, which you got their support.

Sincerely yours,

JOSEPH A. GAILIS, *Treasurer.*
W. HARLOW, *Recording Secretary.*

KANSAS CITY, MO., *March 28, 1935.*

Senator DAVID I. WALSH,
Chairman Senate Education and Labor Committee,
Senate Office Building, Washington, D. C.:

Protest Wagner union labor bill, labor disputes bill, S. 1958. Regard it as drastic, biased, and unfair as previous Wagner bill. Unless you give industry some support that will enable it to help overcome this frightful depression you will find the administration and the country still in the mire and certain to go deeper than ever. Eventually you must depend upon industry to overcome the depression and save this country. Then why strangle our one great hope with such vicious and destructive legislation as the Wagner bill seeks. Unless we have some statesmen in our Government today who are sufficiently sound and courageous to oppose and save industry we are headed for destruction. Our country is doomed.

COLORADO MILLING & ELEVATOR CO.,
JOHN L. DOWER, *President.*

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BOSTON, MASS., *March 28, 1935.*

Senator DAVID I. WALSH,
Washington, D. C.:

Your support of Wagner labor disputes bill, S. 1958, and Black 30-hour-week bill, S. 87, will be greatly appreciated by all members of Lodge 301, International Association of Machinists, at Boston. All these men are registered voters.

H. L. MCABEE, *President.*
E. T. WRIGHTS, *Financial Secretary.*

READING, PA., *March 28, 1935.*

Hon. DAVID I. WALSH,
Senate Office Building, Washington, D. C.:

Retel submitting brief by registered mail protesting Wagner bill, expecting it to be printed in committee hearings.

BERKSHIRE EMPLOYEES ASSOCIATION,
EARL S. WOLF, *President.*

PHILADELPHIA, PA., *March 29, 1935.*

Senator DAVID WALSH:

Reactions gathered on speaking tour in South for Wagner bill is that public demand is overwhelmingly for immediate favorable report on Wagner bill without amendments or changes. On behalf of 60,000 organized hosiery workers in 18 States insist upon immediate action to bring labor disputes to Congress for vote. If bill is tampered with in committee will be worthless. Throughout South especially demand for bill is increasing daily.

AMERICAN FEDERATION OF HOSIERY WORKERS.
JOHN W. EDELMAN.

STATEMENT OF R. C. ALLEN, VICE PRESIDENT OF OGLEBAY, NORTON & CO.; ALSO PRESIDENT OF THE LAKE SUPERIOR IRON ORE ASSOCIATION, CLEVELAND, OHIO

The CHAIRMAN. What is your full name?

Mr. ALLEN. R. C. Allen.

The CHAIRMAN. And your residence?

Mr. ALLEN. Cleveland, Ohio.

The CHAIRMAN. And what business are you engaged in?

Mr. ALLEN. I am vice president of Oglebay, Norton & Co.

The CHAIRMAN. Is that a mining company?

Mr. ALLEN. They are engaged in the mining of iron ore in the Lake Superior region and the transportation of the ore down the Lakes, and in the sale of the ore in the trade.

The CHAIRMAN. How many employees have you?

Mr. ALLEN. We employ at the present time about 800 men.

The CHAIRMAN. How many do you employ as a maximum? How many do you have as a maximum number of employees?

Mr. ALLEN. About 2,000 in the mines.

The CHAIRMAN. Yes.

Mr. ALLEN. I am also president of the Lake Superior Iron Ore Association, which embraces in its membership everybody engaged in the mining of iron ore in the Lake Superior region, excepting only the Oliver Iron Mining Co., which is a subsidiary of the United States Steel Corporation. I am speaking here for the Lake Superior Association.

The CHAIRMAN. Are your employees organized?

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Mr. ALLEN. They are organized in the so-called "company union."

The CHAIRMAN. Yes.

Mr. ALLEN. And they are organized at each point of production.

The CHAIRMAN. You may proceed.

Mr. ALLEN. We in the Lake Superior region on the iron ranges have never had any labor troubles. In my lifetime there has never been any strike that I know about. The relations between the mining managements and the men have always been cordial and peaceful and direct.

Within the last couple of years, through the so-called "company union", we have merely formalized relations which have always existed in that region.

But—we think in anticipation of the possibility of the legislation here under consideration—determined efforts are now being made to persuade the men engaged in iron mining to joint the American Federation of Labor.

Within recent months a number of the companies have been served with notices by these newly born units of the American Federation of Labor, requesting these companies to recognize them as the sole bargainers for all of the employees. The employees are being importuned to join the American Federation. Impossible promises are being made to them and mispresentations. They are told that the President of the United States desires that they join these units. They say that publicly. They put it on handbills.

The American Federation of Labor is making only one demand at the present time, and that is for recognition of their organization as the sole bargaining agency in that region. Our communities are being split. Social discord is being fomented, and we have there in that region today a condition that has never before existed.

Now, this condition is not something which arises in the natural order of things in that region. These organizers do not live there. They are not known. They come from some other part of the country. They tell our men the troubles which they have, which they themselves have never thought about.

We have not had any trouble throughout the depression. We have spread the work as far as it was possible to do so. We are paying the wages that we paid in 1929. Our working conditions are not subject to fair criticisms, and the living conditions and the social conditions surrounding our operations are not subject to fair criticism and have not been criticized.

I am not here to suggest amendments to this bill. We are opposed to the bill in toto for all of the reasons which Senator Callahan has advanced, and for a number of others to which I would like to speak.

We are opposed to this bill and all legislation of this kind because it drives a wedge between the management and the men.

One cannot get results in production by putting the responsibility in one place and the authority in another place. Mining is a hazardous business. The safety of the men is the responsibility of the management. You cannot protect the works; you cannot protect the lives and the health of these men unless there be discipline in the organization, and there is no discipline in an organization where the authority, as well as the responsibility, does not reside in the management.

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If this legislation is passed, we shall have immediate trouble and continued chaos in a region in which for at least 40 years there has been peace and good relations between the management and the men.

We oppose this bill also because if the plans of the proponents of the bill materialize, then we shall have a universal organization of labor under the leadership of the American Federation, or some similar organization, which, in our opinion, is merely the organization of society against itself, an exploitation, if you please, of one element of the population by another organized element of the same population.

We oppose this bill because it will strengthen the hands of the great integrated concern against small concerns. The only advantage which the small concern has today is in the close contact between the management and the men, the increased efficiency, if you please. If you standardize everything, as this bill would do—wages, hours, working conditions, and so on all down the line—and put all industry under uniform regulations and hours, you deprive the small industry of the only advantage it possesses today, of the only means it has of existing today—that is, you deprive it of its greater efficiency. That alone preserves it now. Take that away and it is gone.

We believe in the principle of collective bargaining. By that we mean bargaining by the management with its men, not bargaining with the employees and some other organization, or with the officers of some union who have no other connection whatsoever with the concern with which the bargaining is to be done.

Our system of bargaining is working well. So far as we know, our men do not wish to change it.

I want to say that I am not just speaking for our men. I am only giving you my opinion about that.

Every conceivable thing which concerns the men and the management is brought out, considered, and decided amicably, justly, and fairly. That is the record down to date. But if this bill is passed or any similar legislation, that sort of thing will disappear in the Lake Superior region. We do not like to contemplate it. We hope very much that the bill will not pass and it will be reported upon unfavorably by your committee.

I thank you.

The CHAIRMAN. We will next hear from Mr. McAuliffe. You will try and be as brief as possible, will you, as I have to go to the Senate.

Mr. MCAULIFFE. Yes, sir; I will.

STATEMENT OF EUGENE McAULIFFE, PRESIDENT OF THE UNION PACIFIC COAL CO., AND DIRECTOR AMERICAN MINING CONGRESS, OMAHA, NEBR.

The CHAIRMAN. Please state your full name.

Mr. MCAULIFFE. Eugene McAuliffe.

The CHAIRMAN. And where do you reside?

Mr. MCAULIFFE. Omaha, Nebr.

The CHAIRMAN. And you are president of the Union Pacific Coal Co.?

Mr. MCAULIFFE. Yes, sir.

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The CHAIRMAN. Have you any other mining connections?

Mr. MCAULIFFE. We have a small subsidiary company in the State of Washington, the Washington Union Coal Co.

The CHAIRMAN. How many employees have you in your Nebraska company?

Mr. MCAULIFFE. Approximately 1,800.

The CHAIRMAN. Are they organized?

Mr. MCAULIFFE. They are.

The CHAIRMAN. In a so-called "company union"?

Mr. MCAULIFFE. No, sir.

The CHAIRMAN. How?

Mr. MCAULIFFE. In the United Mine Workers of America.

The CHAIRMAN. In the United Mine Workers of America?

Mr. MCAULIFFE. Yes, sir.

The CHAIRMAN. What are your views about this bill?

Mr. MCAULIFFE. They are rather unfavorable to the bill, Senator.

The CHAIRMAN. Will you make a statement?

Mr. MCAULIFFE. Thank you, sir.

The CHAIRMAN. Any statement you see fit to make. If your statement is in writing would you just as soon have it printed in the record?

Mr. MCAULIFFE. I question whether it can be read by anybody except myself. It was written by myself hurriedly, and I did not have time to copy it, Senator.

The CHAIRMAN. Very well.

Mr. MCAULIFFE. Speaking from the standpoint of one who has maintained close relations with labor and labor organizations as an employee, and as a member of a labor organization, as well as that of employer of labor, for nearly half of a century, I find myself unable to support S. 1958, commonly referred to as "The Wagner Labor Disputes Bill."

My opposition to the bill is due to the belief that it cannot be successfully administered under any form of government short of a military dictatorship (in which case an order or series of orders emanating from a bureau or a commissioner would serve the purpose of the proposed act), that purports to base its findings upon fact and equity.

The bill supposes an exercise of control over all industry. The Nation passed through one such futile, however well meant, experiment, when it undertook to prescribe and make uniform, the personal habits of some 120,000,000 people. I refer to the lamentable failure to enforce the prohibition act, an experiment that cost our people millions of dollars, and thousands of lives; and what was more deplorable, a large part of our population, during the experimental period, developed the belief that all law and all morality could be flouted with impunity. It is axiomatic that a law that is not acceptable to the mass cannot be successfully administered or enforced.

Another and more recent effort to regulate all industry, based on the desire to ameliorate the problems of labor, has suffered, with milder effects, the same character of failure. I refer here to the attempt to codify, regulate, and govern all industry through the National Recovery Administration. This plan to improve industry and make it possible to pay living wages where semistarvation and

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privation on the part of labor did in some cases undeniably exist, failed to a large extent because of certain fundamental defects, among which I might mention:

It attempted to take in too much territory.

It attempted to apply the same rules to a small business that it did to the largest. In the one instance, perhaps 90 percent of the project was made up of labor, 10 percent other elements. In the other case, 40 percent might be labor and 60 percent capital charges, taxes, sales expense, and so forth.

In establishing rules—made overnight—it was not humanly possible to meet thousands upon thousands of varying conditions, so from necessity blanket rules were made and revolt occurred.

It failed to recognize the fact that much of our national growth was foundationed upon certain local situations, where the conditions as regards cost of raw material, cost of living and consequent cost of labor enabled the business to grow and survive.

It failed to give due weight to the selfishness of humanity, and last but not least it suffered from lack of a constitutional background.

I feel definitely that Senate 1958 will travel the same road, and no betterment will come to labor from it. Much good has come to labor from the approximately 550 codes established under the N. R. A., and there is no legislation now before Congress for consideration, that embraces more of hope and aspiration than did the National Recovery Act. I continuously urge that the way we have traveled for 2 years be improved and strengthened rather than that we blaze a new trail.

Speaking more specifically to the certain features of the bill that in my opinion carry the seeds of failure, I would suggest that it is a partisan measure intended to extend the privileges of labor without attaching any corresponding degree of responsibility. Labor can appeal to the law for redress and while the findings of the Labor Board are made mandatory on the employer, the employees (sec. 12, p. c) cannot be compelled to accept same. The act (sec. 15) actually provides that it shall not be so construed as to restrict the right to strike. I submit that if legal supervision is to be extended to the employees' rights, then similar protection to continue operation under the award made should be afforded the employer. The act attempts to base a most sweeping form of labor dictatorship upon a law which depends upon the theory that (sec. 1) "the free flow of commerce" will be served by according extraordinary and unilateral rights on labor by legislative enactment, and which disregard entirely the fact that the age-old law of supply and demand will always determine the flow of commerce. The act also attempts to establish certain rights of labor without defining what constitutes labor, except in the most general terms (sec. 3).

The CHAIRMAN. Will you suspend for a moment?

Will all of those in the room who desire to be heard today stand up? Who are the men representing the newspapers?

Mr. HANSON. Elisha Hanson, representing the American Newspaper Publishers Association.

Mr. KELLY. Harvey J. Kelly, also representing the American Newspaper Publishers Association.

The CHAIRMAN. Mr. Hanson and Mr. Kelly.

Mr. CARTWRIGHT. I desire to be heard.

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The CHAIRMAN. Mr. Cartwright, whom do you represent?
Mr. CARTWRIGHT. The Oklahoma Pipeline Co.
The CHAIRMAN. And this gentleman with you represents whom?
Mr. WHITEHEAD. The Carter Oil Co.
The CHAIRMAN. And who else?
Mr. TITUS. Louis Titus; I represent the petroleum industry.
The CHAIRMAN. You are in opposition to this bill?
Mr. TITUS. Yes, sir.
The CHAIRMAN. There are a number of others in addition to the representatives of the American Federation of Labor. We will have to ask you to suspend and come back at 2:30 this afternoon.
(Whereupon, at 12 noon, a recess was taken until 2:30 p. m. of the same day.)

AFTER RECESS

(The committee reconvened at 2:30 p. m., pursuant to the taking of recess at noon.)
Present: Senators Walsh (chairman) and Murray.
And also: Senator Wagner.
Senator WAGNER. In order to save a little time, Senator Walsh has asked me if I would proceed with the hearing.
Is Mr. Lederer present? (No response.)
Mr. MCAULIFFE. Senator, I had not finished.
The CHAIRMAN. You have not finished your statement?
Mr. MCAULIFFE. No, sir. I stopped about half-way

STATEMENT OF EUGENE McAULIFFE—Resumed

Senator WAGNER. Suppose you continue, Mr. McAuliffe.
Mr. MCAULIFFE. Another and a common weakness of the act lies in the fact that the consumer of the product of the mill, factory, or mine subject to the law, he who pays the bills, is accorded no rights toward a continuing supply of the material or product involved in the controversy; the repudiation of a legal award, sanctioned under the act, damaging not alone the employer but the consumer, who had no place in the proceedings.
Your honorable committee must be well aware of the fact that a large percentage of the labor troubles and strikes which occur are over matters of no concern to the employer, wholly relating to questions of union jurisdiction, many of these cases brought about by the most flagrant forms of racketeering, with murder not an uncommon byproduct.
The act starts too far up the union-labor line to prove successful. I hold that labor should have the freest right to organize for its protection and welfare, but I am one of those who believe that the wholesale unionization of all labor accomplished overnight will only lead to the destruction of the theory of labor organization. I have in mind a labor organization that never attempted the closed shop, content to win membership by a continuous though conservative process of securing improved wages and working conditions; the man who elected to stay without given the same rates of pay and working conditions as his neighbor. That organization made consistent progress until a swollen membership list and a heavy accumulation of cash collected, led it into a series of speculative orgies that equaled in a way any of the flatuant get-rich schemes in 1928 and 1929.

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This union established banks, it went into the coal-mining business, flouting and refusing to deal with the United Mine Workers of America, it sunk millions in the Florida land boom, with the result that every enterprise it went into went broke and some of its principals were found guilty and sentenced by the courts. Among the other forms of wreckage resulting from the arrogant labor leadership employed, was the destruction of millions of life insurance held by its members. I have never found that laboring men, even labor officials, possessed either all the virtues or all the frailties of mankind. We are all pretty much alike, and no class should be accorded the absolute backing of the law unless full provision for good conduct is exacted in return.

I am not prepared to yield control of the destinies of labor minorities to an alleged majority. Time and time again so-called "majorities" have proven to be the work of a few aggressive, semicriminal individuals, who by sheer dishonesty and ruthlessness overrode all labor-made laws and regulation.

Section 10, page c, provides that "the rules of evidence prevailing in courts of law or equity shall not be controlling." This provision can only be construed as leaving the way open for partisan and arbitrary control of hearings, expediency to override justice. It is my humble opinion that a case which is not settled right does not stay settled. There doubtless are too many technicalities in many of our court proceedings, but some regularity must be exercised, if not the door is left wide open to civil court proceedings and before we know it the courts will be clogged with labor dispute cases.

I do not like even the theory of the bill as one friendly to organized labor. I would like to save labor from its destructive results. There is room for betterment in labor relationshps, but changes, if they are to be permanent, must be approached carefully. Revolution is destructive, and to put the force and power of the Federal Government behind labor, without at the same time attaching restrictive provisions, would prove suicidal to labor. Only a small faction of the world are safe with power. I would rather incline to the encouragement of labor and capable labor leadership, by giving them a foundation of positive governmental fact-finding upon which to build up theories of human betterment, buttressed with the immediate support of laws, fixing in general terms minimum wages and maximum hours of work. Given the full facts as to wages, hours of work, and so forth, and costs, realization, profit or loss pertaining to the major industries, with a wholly detached and impartial commission to interpret and publicize the facts, the public opinion that makes and unmakes governments will provide deserved betterment for the underprivileged.

No law can be successfully enforced that attempts to put all labor, even in one line of service, on the same earning basis. There are too many small industries to warrant belief in success. Again I will venture the opinion that of the unemployed that exist today, not less than one-fourth of the number are in a way unfit. They cannot earn a full day's wage in a highly competitive world, and their services and their support can only be cared for by individual and flexible labor relationship.

That is all, Senator. Thank you, sir.

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The CHAIRMAN. Thank you, Senator Wagner, for your assistance.

Senator WAGNER. This was a witness that had not finished his statement this morning.

The CHAIRMAN. The two newspapermen that are here will come forward, please, Mr. Hanson and Mr. Kelly.

STATEMENT OF ELISHA HANSON, ATTORNEY REPRESENTING AMERICAN NEWSPAPER PUBLISHERS' ASSOCIATION

The CHAIRMAN. Mr. Hanson, please give us your full name.

Mr. HANSON. Elisha Hanson.

The CHAIRMAN. And you are an attorney representing the American Newspaper Publishers' Association?

Mr. HANSON. Yes; I am an attorney representing the American Newspaper Publishers' Association. That is an organization which has within its members more than 400 publishers of daily newspapers in the United States.

The CHAIRMAN. Yes.

Mr. HANSON. They represent about 80 percent of the total circulation of daily newspapers, that total circulation being above 35,000,000 copies per day. They use more than 80 percent of the total newsprint paper which is consumed in this country, and they employ approximately 80 percent of the total number of employees, and they run into hundreds of thousands.

The CHAIRMAN. Are there labor organizations among the newspaper employees?

Mr. HANSON. There are. There are a great many labor organizations. We have four organizations in our mechanical department. We have the pressmen's union, we have the typographical union, we have the stereotypers union, and the photo-engravers union. We have the truck-drivers union. The newspaper truck drivers have their own union. And there is the mailers union and the paper handlers union. And I think the American Newspaper Publishers' Association was the first national organization of business men to enter into arbitration agreements on a national scale with organized labor. Those agreements run back to 1901, and I believe are the longest that have been in existence since that period.

I do not wish to take up very much of your time, as Mr. Kelly, who is the chairman of our special standing committee which has relations with labor, is to follow me, and unfortunately I have to leave the city in a very few minutes to keep an engagement which I could not cancel.

I do want to call to your attention certain things. The newspaper business is essentially a local business. The paper in New York is not affected by the newspaper in Philadelphia. The newspaper in Philadelphia is not affected by the territory in Baltimore. And there is very little competition between cities even as close as Baltimore and Washington, either for circulation or advertising, or for what have you.

The nature of the business requires steady employment, even in the most abnormal times, when other businesses or industries are able to close down, the newspaper, by the very nature of its business, has to keep running, because when a newspaper plant shuts

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down it is out of business, and, as Mr. Kelly will point out, the result of that system has been, during this present depression, that the rate of employment and rate of pay in the newspaper business has been maintained at a far higher scale than any other business relatively in the country. In fact, the greater our depression, the greater burden on the publisher, who has to continue because the revenue is decreased and the burden is greater than in normal times.

The newspaper has two sources of revenue, generally speaking; one is circulation and the other advertising. And because of policies which have been in effect in this country for a great many years, circulation revenues are wholly incapable of paying the cost and expense of publication and distribution of the newspapers.

The association which we represent has examined this bill and it is sorry that it cannot give it its support. If it gives it its support, we probably would not be here today.

Unless there are some questions you have of me, I will ask Mr. Kelly to tell you why the association opposes it.

The CHAIRMAN. You may be excused, Mr. Hanson.

STATEMENT OF HARVEY J. KELLY, REPRESENTING THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION; ALSO CHAIRMAN OF THE INDUSTRIAL BOARD

The CHAIRMAN. Your full name is Harvey J. Kelly?

Mr. KELLY. Yes, sir.

The CHAIRMAN. Representing the American Newspaper Publishers Association?

Mr. KELLY. Yes, sir.

The CHAIRMAN. And you are chairman of the industrial board?

Mr. KELLY. I am chairman of the special standing committee of the American Newspaper Publishers Association and also chairman of the newspaper industrial board. However, I am appearing solely for the American Newspaper Publishers Association.

The CHAIRMAN. Very well. You may make your statement.

Mr. KELLY. I am appearing before you for the purpose of presenting facts concerning S. 1958, Wagner bill, and its effect upon industrial relations of the newspaper publishing business, so that your decision, when reached, shall be in the light of all the facts and not in the light of a part of them only.

The function of the special standing committee of the A. N. P. A. is to deal with all industrial relations problems of the business arising from contracts or negotiations with union labor. Its three members are the publisher representatives on what is known as the "international arbitration board", a bipartisan board, which has functioned by mutual agreement between the publishers and the unions of the printing trades since 1901. It aptly has been called the "supreme court of industrial relations" in the newspaper publishing business. It is a board of review. Local arbitration boards pass upon disputes in the first instance, under procedure developed by publishers and the printing trades unions in 34 years of industrial relations experience within the business.

Wages rates are high in this business. Average hourly earnings of workers employed by newspapers stand at the top of the list, as

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may be observed in the National Industrial Conference Board service letter for February or preceding months. The January 1935 earnings of news and magazine workers averaged, for unskilled labor, 50.7 cents per hour; skilled labor, 96.4 cents per hour; against an average for workers in all manufacturing establishments of 49 cents per hour for unskilled labor, and 65.6 cents per hour for skilled labor. Special standing committee data corroborates the National Industrial Conference Board data. It shows an average for all printing trades employed by newspapers of 97.1 cents per hour; skilled news department workers average $1.10 per hour; unskilled, 49.8 cents per hour.

Unemployment has been less among newspaper workers than in other businesses. The employment and pay-roll data of the United States Bureau of Labor Statistics shows that employment and pay rolls in the newspaper and periodical publishing business receded from peak levels only half the recession which was recorded for employment and pay rolls of all manufacturing business.

It might be well to mention also that the character of unionization in the newspaper publishing business is craft unions. There are to my knowledge no plant unions, or owner or rather employer unions within the industry or our business.

It was testified by the spokesman for the Allied Printing Trades Association during the public code hearings that the average wage reduction for all printing trades averaged but 10 percent from the peak, as a consequence of the depression. All of which, it seems, indicates that equality of bargaining power is well developed in the newspaper publishing business.

The alleged purpose of S. 1058 is to effect "equality of bargaining power between employers and employees," but it is silent as to equality of responsibility. We oppose the bill because the methods proposed would precipitate absolute inequality. It would take away contract rights of publishers and leave them exposed to restrictive and costly ex parte laws, rules, and regulations of unions on the one hand, and the inequalities of this bill on the other.

Employers under the bill would have no voice in the matter of their relationship with employees. They would be gagged, handcuffed, and made subservient to a politically appointed board of three, whose findings of fact, limited by the terms of the measure to isues raised by employees only, cannot, under the terms of the measure, be reviewed by the courts.

The bill removes organized labor from the jurisdiction of the courts; it provides that an arbitration award may be entered as a judgment against an employer, but legalizes and thereby encourages ex parte repudiation by labor of arbitration awards; it specifically reserves to labor the right to strike if it chooses without submitting differences to arbitration, or if it disagrees with an arbitration award resulting from an agreement into which it has entered.

There are on file in the office of the special standing committee, 534 contracts between members of the A. N. P. A. and printing trades unions. Of these contracts, 268 provide for arbitration of the terms of the next contract in accordance with the arbitration procedure of the newspaper publishing business.

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Under the act the National Labor Relations Board now set up by Executive order of the President for the period of the Recovery Act is made permanent (sec. 3).

The Board is given unrestricted authority to promulgate rules and regulations for its work (sec. 6).

The Board is given superior jurisdiction over all boards and agencies "such as have been or may hereafter be established by agreement, code, or law to deal with labor disputes" (sec. 6 b, 10 a, 10 b).

This provision would violate the agreement between the President of the United States and the daily newspaper publishers who have assented to the Code for the Daily Newspaper Publishing Business. The code as approved by the President expressly provides that it cannot be modified in such a way as to affect any individual publisher assenting to it in the absence of consent by that publisher to such modification. The code contains a complete method for the determination of labor controversies arising thereunder and this method in turn is based upon more than three decades of experience in the adjudication of such controversies within the business itself and wholly free from outside political interference.

Further, these provisions just referred to as well as other provisions of the bill, particularly 12 c, would nullify 268 existing arbitration agreements mutually entered into by publishers and unions of the printing trades. Into the discard would go rulings and precedent established in 34 years of arbitration by mutual agreement. These decisions and rulings were in many instances by a six-man bipartisan board whose members knew the problems of this particular business. In event of deadlock, a seventh and impartial member cast the deciding vote, after being fully advised on both sides of the question by the respective partisan members.

Experience has shown that where the members of a bipartisan board are unable to agree upon a solution of their problem they have always been able to find an impartial man mutually satisfactory and without exception both sides have accepted his award and abided by it.

There is no occasion at this time to enact legislation which in this particular business could serve only to upset such a system and make it possible for the employees who submit their case to arbitration to evade and void the results of such an arbitration, if not pleased with the results, while binding the employer to abide by it or ignore it at his peril.

The rights and obligations of employers and unions in the various cases are clearly defined in these arbitration agreements, but if S. 1958 becomes a law, any union under section 12 c, can nullify any ruling it chooses by exercising its right to reject an arbitration award. The employer meanwhile would be bound by all previous rulings and by such additional rulings as a politically appointed board, unfamiliar perhaps with the industry, might see fit to impose.

Other features of this measure which combine to nullify existing arbitration contracts in the newspaper publishing business are:

Definition no. 7:

> The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

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Definition no. 9:

The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

Under this measure now before you the National Labor Relations Board is empowered to prevent any person from engaging in any unfair labor practice affecting commerce as defined in section 8 of the bill.

The only unfair practices defined in section 8 are practices of employers. The section as a whole reads—I know you are familar with the section and I will not take the time of the committee to read section 8.

The Board is authorized to enforce the majority rule for the entire unit of the industry, a craft unit, a plant unit, or other unit (sec. 9a, 9b).

The practical effect of this provision is that if 51 percent of the employers of "the employer unit, craft unit, plant unit, or other unit", as the Board may decide, votes to affiliate with a designated union, that union may enforce a closed-shop contract under which the remaining 49 percent of employees who may desire not to affiliate with that particular union or any union will be coerced into union membership.

Senator WAGNER. Mr. Kelly, would you prefer to finish your statement before my asking any questions? If you would, I won't interrupt you.

Mr. KELLY. If it is all the same to you, I would; otherwise you may interrupt.

Senator WAGNER. Whatever you may wish.

Mr. KELLY. I will go through, if it is all the same to you.

There is nothing in this bill which would require a union failing to obtain a majority in an election, to abide by the result of that election and cease its efforts to enforce its wishes upon both the employees who have rejected its program and the employer. The measure can be construed as nothing more nor less than an incitement to agitate and keep industry and business in a turmoil until the unions have attained their objective. This, notwithstanding the guarantees of section 7 (a) N. I. R. A. and the proviso of section 9a of this bill reading:

Provided, That any individual employees or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing.

Under a closed-shop contract the union and the employer are the contracting parties. An individual or minority group has no standing under a closed-shop contract. The union officers or duly elected or appointed committees are the accredited representatives of the union. Section 9–a specifically accords to the majority the exclusive right to represent all the employees in collective bargaining in respect to "rates of pay, wages, hours of employment, or other conditions of employment." What else is there for a minority group or an individual to talk about? The proviso is meaningless.

The occurrence of recent months in Cleveland, Ohio, will suffice to illustrate how little unions will regard the rights of individual

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employees or minority groups of employees to present grievances to their employer.

Nineteen employees of the circulation department of the Cleveland Plain Dealer joined the International Teamsters, Chauffeurs' and Stablemen's Union. A contract in existence between the union and the Cleveland Plain Dealer provides specifically that union membership is not a condition of employment. The 19 employees, being outvoted—concerning the terms of a contract—by a majority of members of the union not employed by the Plain Dealer, withdrew from the union and evidenced a desire to deal directly with the Plain Dealer. Subsequently a mob of some 200 men, led by officers of the union, congregated at the Plain Dealer plant and stopped the delivery of newspapers until these men paid their dues.

In section 13 of the measure the Board is authorized to send its employees and agents on "fishing" expeditions into employers' plants and employers refusing to give up whatever the Board demands are made subject to penalties.

Those penalties may be fines up to $5,000 or imprisonment up to 1 year or both.

There is nothing in the act to require unions to account for the huge sums collected from workers.

The objective of these so-called "investigatory powers" is to enable representatives of organized labor to get, among other things, an employer's financial statement. Assume it is secured and shows a profit, is the National Labor Relations Board as contemplated by this bill then to determine what should be the proper apportionment in wages as between, say, a floor sweeper and a skilled mechanic and a foreman? It is to determine the proper apportionment as between so-called labor and capital? Since Hammurabi the Assyrian and his industrial code, more than 40 centuries ago, men have been unable to agree on that with all of its ramifications of risk, reasonable return, relative skill and worth of labor, management and other factors.

In the newspaper business the International Arbitration Board rule in 34 years of experience is that books of account may not be required in evidence by an arbitration board unless the publisher pleads inability to pay. Union representatives in arbitration which concerns papers, known to be losing money, have testified eloquently that they are not interested in earnings or losses of the employer; that all that matters is the reasonable value of the union man's service as measured by wage rates of other concerns.

In practical application this "investigatory power" (if this bill becomes a law) will result, so far as newspapers are concerned, in pushing over the brink of bankruptcy those papers which are in a financially weakened condition. Competitors and competing mediums, to say nothing of advertisers intent on endorsing lower rates regardless of results, will put on the finishing touches and more sources of legitimate employment will dry up.

The Board provided in S. 1958 is authorized to conduct proceedings without regard to the rules of evidence prevailing in courts of law or equity, and may delegate the conduct of those proceedings to a single member of the Board or a designated agent or agency.

The Board is further authorized to determine a complaint upon the report of its agent or agents without the requirement of taking

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further testimony or hearing argument. If in the opinion of the Board any person named in the complaint has engaged or is engaging in an unfair labor practice, then the Board is authorized to issue orders.

The facts on which these orders are issued are not subject to review by the courts. The Board may at any time, until a transcript of the record in a case shall have been filed in a court, give "reasonable notice" and in such manner as it shall deem proper modify or set aside, in whole or in part, any finding or order made or issued by it.

No objection not urged before the Board can be considered by the courts unless the failure or neglect to urge such objection is ex-excused "because of extraordinary circumstances.

While any person aggrieved by an order of the Board may obtain a review in any circuit court of appeals wherein the practice was alleged to have been engaged in or where such person resides or transacts business, these facts limit the court's power to review:

(*a*) No employee individually and no group of employees collectively shall be compelled to render labor services without consent.

(*b*) Nothing in the bill shall be construed so as to interfere with or impede or diminish in any way the right to strike.

(*c*) There is no provision in the bill, defining any act of an employee or a group of employees as an unfair labor practice.

(*d*) Employers have no right to bring complaints.

(*e*) Employers are bound by the Board's action against them, whereas employees are not.

(*f*) If the Board had any evidence on which to base an order, irrespective of the rule or preponderance, the court cannot review it.

All of which constitute unfair and one-sided legislation, which amounts, in practical application, to a labor dictatorship.

Declaring its purpose "to promote equality of bargaining power between employers and employees," the measure, if enacted, would forever remove any prestige of equality insofar as employers are concerned.

The CHAIRMAN. Do you have some questions, Senator Wagner?

Senator WAGNER. Mr. Kelly, I understood you to say that in your newspapers now that the large percentage, the majority of your employees today, are in unions.

Mr. KELLY. I think you misunderstood me, Senator, because I made no such statement.

Senator WAGNER. You did not.

Mr. KELLY. The majority of newspaper employees are not in unions. You are talking now of total employees, are you not, total number of employees?

Senator WAGNER. Yes.

Mr. KELLY. I should say between 5 and 10 percent are organized. Now, you understand, I am differentiating between the mechanical departments.

Senator WAGNER. Oh, no; I am speaking of the whole, including the printers and mailers.

Mr. KELLY. Are you confining it? If you confine it to the mechanical departments, printers, mailers, stereotypers, photo-engravers, pressmen, then I should say 80 percent at least are organized.

Senator WAGNER. Yes.

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Mr. KELLY. But those departments do not represent more than 10 percent of the total number of employees in the newspaper publishing business.

Senator WAGNER. As to that 10 percent, have you had the experience that you are stating is going to happen here if the workers are given the rights as set up under this legislation?

Mr. KELLY. Why, this is entirely different from our set-up, Senator.

Senator WAGNER. You are dealing with labor organizations though, are you not?

Mr. KELLY. Oh, yes. We are dealing with approximately 50,000 members of organized labor in the mechanical department.

Senator WAGNER. Do you think if this bill is passed, that that relationship will be disturbed of these labor organizations and yourself?

Mr. KELLY. I am positive of it.

Senator WAGNER. Why?

Mr. KELLY. Based on my experience, for the reason that this Board as contemplated in the act supersedes and takes superior jurisdiction over the International Arbitration Board, which has functioned in the industry by mutual agreement for more than three decades.

Senator WAGNER. Of course, Mr. Kelly, this Board only deals with unfair labor practices, which are here enumerated and, after all, if you are actually dealing with a union, recognizing their representatives as the representatives of the worker, I cannot see how this particular legislation affects you at all.

Mr. KELLY. For instance, under definitions numbers 7 and 9 and, of course, you will understand that my remarks are not to be construed as antagonism toward organized labor as such, because I am dealing with them all of the time——

The CHAIRMAN. Anything further?

Senator WAGNER. I would so interpret them, Mr. Kelly. That is why I was anxious to inquire along this line.

Mr. KELLY. I am about to make some statements which are statements of experience and observation.

Senator WAGNER. Yes, sir.

Mr. KELLY. And not antagonisms, because, as I say, I have been dealing with printing trade unions for some 15 years, and number among them some warm friends. But that does not mean we do not criticize each other as to the newspaper's shortcomings.

Senator WAGNER. Oh, no.

Mr. KELLY. From that experience, I should say that when it would be advantageous to do so, union representatives who are opportunistic and alert to every advantage could, under the definitions of 7 and 9, hold that the dispute was threatening to affect commerce because a strike might grow out of the dispute.

Senator WAGNER. Yes, sir; but what—go ahead. It is irrelevant.

Mr. KELLY. Under sections 10a and b they could set up the superior jurisdiction of the National Labor Relations Board over the Board that has functioned so long in the newspaper publishing industry. Once establishing that the Board did have jurisdiction over a particular dispute, the union would be absolved from obeying the arbitration award, unless it was satisfactory, and therein it would

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differ from our arbitration machinery, in which a violation of an award is the rare exception, not the rule, and it seldom happens. Senator, if you will pardon, let me finish the thought. It seldom happens when an arbitration is due that both parties are ready to go into arbitration, or that both parties want arbitration. It so happens that one side or the other is satisfied with an award. There is nothing to prevent any union printing trades that desire avoiding its arbitration obligation from getting it before the National Labor Relations Board.

Senator WAGNER. Mr. Kelly, it does not deal at all with questions of wages or hours of employment unless it is submitted to them as arbitrators. In that case the arbitration is as a matter of agreement, and both sides agreed to submit it to arbitration, and agreed to abide by that arbiration.

And let me go a step further. You agree to that, do you not, in the legislation?

Mr. KELLY. As far as you have gone I agree with you.

Senator WAGNER. And when a judgment is rendered by those arbitrators it has the same effect as a judgment in the courts of law, and both sides are bound by that judgment.

Mr. KELLY. I fail to read that in the bill, Senator. How do you reconcile that statement with section 12 (c)?

Senator WAGNER. The right to strike?

Mr. KELLY. No. It goes ahead and sets up—I will read you section 12 (c). This is what I construe as tying the employer in making an award, a judgment against an employer, but not against labor:

> In any case in which an award has been made, the Board shall file the award in the clerk's office of the United States district court that has been agreed upon by the parties, or, in default of such agreement, that of the district wherein the labor dispute arose or the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award on the grounds hereinafter set forth shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment in accordance with the terms of the award——

and here, Senator, I claim is the joker:

> *Provided*, That no employee individually, and no group of employees collectively, shall be compelled to render labor or services without their consent.

Senator WAGNER. Of course, that is about in every statute that I have ever seen. We cannot have servitude in this country. We cannot take a man by the neck and say, "You go in there and work." If that is what you have reference to I misunderstood you.

Mr. KELLY. Of course, there is the idea that perhaps we view the thing differently.

Senator WAGNER. I think we do, but that has been accepted so generally I did not think you and I would have any controversy about it.

Mr. KELLY. I think it is highly unfair because it taxes the employer definitely by statutory and by penalty, and encourages, if you please, a run-out on an arbitration award on the part of employees.

Senator WAGNER. That is getting into an entirely different controversy. Let me ask you this, Mr. Kelly. Did you send out to the members of your association a pamphlet giving the members a sort of an instruction as to how to deal with representatives of the guild if they should desire to want collective bargaining?

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Mr. KELLY. I am sending out communications to members of the A. N. P. A. all of the time. I would like to see the document. If you have a copy I would be glad to identify it as to whether I sent it out.

Senator WAGNER. No; but my attention was called to a hearing—I think it was in Boston—in which it was disclosed that such a document had been sent out in which members of your association were advised as to how to deal with representatives.

Mr. KELLY. That is rather a broad and comprehensive term. As chairman of the special standing committee my duty is to advise members as to their rights and obligations under contracts where they might assume and in the manner in which a lawyer would advise his clients. We are continually sending out advice where such-and-such a measure is not good for you. Do not accept it unless it is modified, thus and so. I might say that as to any such document as may have been sent out, and I have no doubt that it may have been sent out, and I have no doubt that it was sent out, I would want to identify it before I would admit it, so I would know it was a document from our association.

I am neither admitting nor denying the document you have reference to unless I could see it and identify it. But you will understand that all of the unions are continually sending out advice to local unions as to what they should compel the employer to do.

Senator WAGNER. I did not complain about it, except I was curious, and if you have it with you I would like to see it very much.

Mr. KELLY. If I had all the things I sent out, Senator, there would be a stack that high [indicating].

Senator WAGNER. You do advise them as to how to deal with the representatives of the guild in case they approach the employers?

Mr. KELLY. I do not know as I would want to go as far as saying I advise them how to deal with them. We advise our members under section 7 (a) they must meet and bargain collectively with the chosen representatives of their employees regardless of what department they may come from.

Now, if there is a question of some contract phraseology, such as for instance the contracts which were recommended by the guild at its convention, why, certainly we would analyze that and advise the publishers that they should be on guard against getting into a contract.

Senator WAGNER. Be on guard against what?

Mr. KELLY. We would advise them as to that. Whenever matters of that nature would come to our attention we would analyze them and advise them as to what to guard against in a contract. There is no question about that. There is no secret about it.

By the way, Senator, let me explain that I have heard that referred to numerous times as a secret communication. Now, it is not a secret communication. It is merely a communication that presumably is confined to members of the A. N. P. A., the people who pay my salary.

Senator WAGNER. You earn it. You said something there about a closed shop—that a majority would force upon an employer a closed-shop agreement, I think you said. Now, a closed shop, of course, cannot be effective unless it is a matter of agreement.

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Mr. KELLY. There are various ways of getting an agreement, Senator, in dealing with organized labor, as you are very well aware. Take, for instance, with a newspaper.

Senator WAGNER. I am not aware, because as long as you brought up that subject I do not look upon the American worker as a sort of an outlaw.

Mr. KELLY. Neither do I.

Senator WAGNER. All these things that I have heard here—the danger of giving the American workers some right, such as to elect his representatives, and all of that, I have been a little bit chagrined to hear that, because after all the American worker is the backbone of our Nation. When we were in trouble, fighting to save democracy—as we thought, at least—we sent him to the front and others stayed here.

Mr. KELLY. I was with them.

Senator WAGNER. Yes; of course. They went to the front. And they were ready to make the supreme sacrifice to save this country.

They are men of blood, just as you and I. They have aspirations. They have hopes. They want to preserve this country for their children.

As to this idea, if we give them the right to organize together they are going to do something to destroy industry and destroy our country; it just hurts my feelings a little bit, because I have a higher regard for them. And we are told here, why, what that majority is going to do to industry. And what they are also going to do to the minority, as if they were going to crush industry and crush the minority. I think in most cases they are fair-minded men of independent stock. They want to do the right thing. They want to be treated fairly.

I think, so far as this legislation reflects their aspirations, it is simply that desire to be dealt with justly, and that they want the freedom of contract which, under our theory of government, they are supposed to have as citizens. And in bargaining for their services, it seems to me, in order to have any kind of bargaining power they have got to organize in a large plant. I am not speaking of a small plant. It seems to me they have got to organize in order that they may be on an equality of bargaining power. And I am sure you and I agree, Mr. Kelly, on this—that if you or I are one of 5,000 workers in a plant, and we attempted to bargain individually for our services, particularly in times like these, that we are not on a bargaining equality with our employer, and if he desired to—in the majority of cases that would not probably apply—take advantage of us, either one of us, he could say, "Now, you either have to do this or you do not work at all." I have either got to work or starve. But if those 5,000 men are permitted to organize, and then they present through their representatives their claims, they are at least—not altogether—but they approach bargaining equality.

And I should think that that is a right they are entitled to as Americans, and I am sometimes puzzled at the attitude here, frankly.

Mr. KELLY. Senator, since you brought up the subject, I want to say that you are in my opinion looking at the idealistic side to a greater degree than to the practical side.

Senator WAGNER. That may be.

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Mr. KELLY. If you will permit me to go along that line very briefly, I realize I am taking a lot of time of the committee, and I do not want to take a lot of time getting off on extraneous subjects arguing on a subject which we could not agree on after arguing all day.

Senator WAGNER. I think we could.

Mr. KELLY. Now, I think organized labor as such is everything you have said it is. But go back over a record of organized labor. Has it demonstrated and used leadership? Has it used superior vision? Has it shown a judicial balance on economic and social problems? Has it furnished those ranks of racketeers, intimidation, and graft? Has it demonstrated an ability to control its followers as to be able to eradicate lawless acts? You understand, it is afflicted by the same frailities of human nature which every other group is afflicted with. But, having demonstrated no better qualifications along that line, why should it be trusted with an authority and a power which would not be given to any other group?

I say, regardless of how meritorious these men are, there would be abuses which would far offset the dream of the idealist, and that it would open the way for abuses which should have some check and restraint in the other side.

As it is, this law completely absolves the labor racketeers; I am not talking about the idealist; I am talking about the racketeer, and you know he exists in the ranks of labor just as he exists every place else. It would create in my opinion chaos in industry, and there should be reciprocal responsibilities for the power which this bill contemplates vesting in that group.

Senator WAGNER. That is just the very purpose of this legislation, to provide industrial democracy.

Mr. KELLY. But it does not, Senator.

Senator WAGNER. Oh, well; that is exactly what it does do.

Mr. KELLY. We differ very materially.

Senator WAGNER. I know, but what we provide here where there is any question as to your representation of the workers you cannot have any more genuine democracy than this. We say under Government supervision let the workers themselves, free from influence and free from economic pressure which an employer can bring, and that you and I agree on too, because after all the job depends upon the will of the employer, let them go into a booth, and secretely vote, as they do for their political representatives, in a secret ballot, to select their choice.

Those men are decent citizens, if I may repeat it again, these workers, and they are not going to select a crook, if they know he is a crook. They are going to select the best representative they can.

Mr. KELLY. It does not work out in practice.

Senator WAGNER. If you have industrial democracy, whatever question you have about the integrity of the labor leaders will, of course, be removed. I do not go to your extent at all, because I have a long experience, too.

Let me say for organized labor that I do not hold any brief for them. They take care of themselves; I do not have to; but I know in all of these forward movements for protective laws, not only for their own members, but for women and for children, all the advances we have made in the States in these beneficient humanitarian laws,

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it is largely the influence of organized labor that has brought them about. And they have through their organization been able to bring about a better economic day for the American worker. And I think they have played a very important part in our social as well as our economic progress. And I do not think when you read you meant quite all that you said about the activities of the organized worker. However, I am afraid that the Senator here (referring to the chairman) is getting impatient with our debate here on a side issue.

Mr. KELLY. There is one point I would like to touch on if you will permit me, Senator.

Senator WAGNER. Certainly.

Mr. KELLY. And that is speaking of the worker going into the booth free from coercion. I am for that 100 percent. You and I would not be apart at all on that. But where we reach the forks in the trail is when you imply or appear to believe that organized labor will not coerce the unorganized man into the booth to vote as it directs him to vote. In practical application that happens.

When you say, Senator, that these men are going into the booths and elect the right kind of leaders you are closing your eyes to the practical history of recent months and years in that. There is a recognized record of racketeering, which is known to leaders of labor, and if you are very familiar with it you must become aware from your study——

Senator WAGNER (interposing). Of course, I join with you any time to wipe it out anywhere it exists, just as it ought to be wiped out in political life. It is not only there.

Mr. KELLY. Yes; every place. But there should be reciprocal responsibilities to protect the independent worker. Now, protect him from coercion from either side and I will say you are on the right road to industrial democracy.

Senator WAGNER. Mr. Kelly, there was an experience I had where I started with the United Mine Workers, who represented the workers in 28 different mines down through Pennsylvania and West Virginia, and after some persuasion the employers consented that we hold an election under the supervision of the Government, and 15,000 workers voted in that election. It covered 2 days, and they were all working. Wherever the plant was located the election took place.

We did not permit any electioneering within 200 feet of the booths and all of that. We did not need any policemen we did not need any soldiers. There was no disorder of any kind.

When it was all over the employees admitted it was a free, open, and fair election. And the workers elected representatives. There is an experience I had. You have had some experiences. That was one of a number of experiences.

I had another experience up in the Senator's State, at Brockton, where there was a complaint against the head of the national union, and the men wanted to be free of that union. They said he did not represent them. And in that case we gave those 9,000 workers an election, and they elected their own men. They put out the old leaders, and they elected their own representatives, and formed a new union for themselves.

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And I think the Senator will admit those workers up there in Brockton come from New England families—way, way back. There are very few foreigners around Brockton.

The CHAIRMAN. Not very close.

Senator WAGNER. They are a very high-class lot of workers, and they did that themselves.

Mr. KELLY. Be that as it may, Senator, what is the objection then to making these bodies responsible under the law just the same as the employer is responsible under the law? I fail to see any fairness that makes it a felony for an employer to violate some real or fancied provision of the act while other men may be violating it with impunity.

Senator WAGNER. What responsibility are you speaking of, what responsibility do you mean?

Mr. KELLY. For labor.

Senator WAGNER. Yes.

Mr. KELLY. Why not make labor responsible to the courts to the same degree that the employer is?

Senator WAGNER. Are they not?

Mr. KELLY. No; not under this act.

Senator WAGNER. You are speaking of this servitude provision, is that what you have reference to, because outside of that they are bound. For instance, if the Board should find there were no unfair labor practices they are bound to that decision. That has the effect of a judgment the moment an order is entered.

Mr. KELLY. No.

Senator WAGNER. Oh, yes; oh, yes.

Mr. KELLY. Let me point out one thing there which I think you are overlooking. You referred to the fact that the economic power vests thoroughly in the employer. I do not think you mean that, Senator, for the reason that regardless of how much wealth he may have, after all, man-power is the only thing that can keep that plan going.

Senator WAGNER. I am speaking of the power over the individual worker. It says to him if it does not like him, "Your job is gone. I am going to put another man in your place"; I mean it has that power. You do not question that control?

Mr. KELLY. No; that happens. But after all that assumes every employer is of that type.

Senator WAGNER. Oh, no.

Mr. KELLY. That does, too.

Senator WAGNER. Legislation like this is always for the minority. The large majority of employers are fair and want to be fair to their workers, but there is a minority who have prevented their workers from organizing, who refuse to deal with representatives, who refuse to put the worker upon a bargaining equality, and legislation is always needed for that minority.

I think, as I recall the history of the newspapers, when their employees were injured in the machine in the printing plants you took care of your workers as a rule. And the workmen's compensation would not have been needed for your particular business. But we had to pass it because so many employers just threw the man right out into the street, after he was injured, and resisted any

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efforts to collect damages for the injuries received. So we had to pass the workmen's compensation law.

Mr. KELLY. I am afraid, Senator, we could argue all afternoon and we would find ourselves apart on some things.

Senator WAGNER. I can see that. Now, you spoke about the investigation in going in to ascertain how much money a particular newspaper is making. This bill only permits investigations in relation to the subject matter before the Board, that is, as to unfair labor practices.

Mr. KELLY. I know, Senator, but now let us get down to practical application again

A politically created board quite naturally is going to have numerous agents all over the country. By the very nature of the thing it must have. And undoubtedly for the moment let me say there is where your breakdown is going to occur. If this thing becomes a law it will become impossible of adequate administration. But leaving that, you have these agents or agencies that are appointed by this politically created board. It is easy on language as broad and ambiguous as that is to go on an exploration expedition into any plant.

Senator WAGNER. This language is identical with the language in almost any quasi-judicial board that has been set up either by a State government or the Federal Government. They are permitted, of course, to subpena witnesses, make investigations on matters relating to the subject, and there is not any other way to state it.

The moment a witness feels his rights are being invaded and subjects are being investigated which do not relate to the subject you can go into court by simply a refusal to give the particular testimony.

Mr. KELLY. Yes, sir; but how about the publishers, take it generally, the employer, although I am talking for the newspaper publishing industry, the man——

Senator WAGNER (interposing). Yes.

Mr. KELLY. The man whom we familiarly speak of as out in the sticks. I came from the sticks myself, and so I do not mean that in a derogatory manner. But take the employer who has not had a chance to become reasonably familiar with his rights under this law or any other law, and he is shown by an officious representative, and you will admit that some of these representatives of these boards are that way, who comes in and demand something, and the employer says, "you cannot have it." And the representative says, "Here. Mr. Man, you better read this:"

> Any person who shall wilfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

Which is a felony.

Senator WAGNER. That same argument could be applied to every Board that a State or Federal Government has set up, the Internal Revenue Department, the Communications Commission, the Interstate Commerce Commission, the Federal Trade Commission. It is the identical provision copied almost word for word from those laws. And why should there be any greater abuse here than in the administration of these other Boards? And that has not been the experience.

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Mr. KELLY. All right. As a purely personal expression, because I do not want to speak for my association, on these particular points; I am expressing a personal opinion; but as a purely personal opinion it seems to me you would go a long way toward taking the criticism away from that if you defined the matter of fair practices from the employee so that there would be reciprocal responsibility and penalty, so that Mr. Employer could say, "Here, Mr. Man, you are going too far."

Senator WAGNER. You mean that the employer could interfere with the employees in organizing an association?

Mr. KELLY. No; I mean the representatives of organized labor coming into his plant for the purposes of coercing his employees into membership when they do not choose to join.

Senator WAGNER. I was going to ask you something about the newspaper board. I think you referred to it briefly.

Mr. KELLY. You mean the newspaper industrial board?

Senator WAGNER. Yes.

Mr. KELLY. Now, I was not referring to the newspaper industrial board in my statement.

Senator WAGNER. Yes.

Mr. KELLY. That is, the international arbitration board, which has existed for 34 years in the industry, and it is the supreme court of industrial relations in the industry, created by mutual consent, and is the result of the thought and experience of the best men who could work on it on both sides.

Senator WAGNER. That deals with wages, hours, and conditions of employment generally?

Mr. KELLY. Yes.

Senator WAGNER. Of course, that has nothing to do with this legislation. Are you not a member of another board?

Mr. KELLY. Yes, sir; I am chairman of the newspaper industrial board.

Senator WAGNER. How many members are there on that board?

Mr. KELLY. Before I answer your question, Senator, let me say that any statement I make is an expression of personal opinion, because I am not authorized to speak——

Senator WAGNER (interposing). I am asking for the record now.

Mr. KELLY. This is a matter of personal information.

Senator WAGNER. Is not that a matter of record?

Mr. KELLY. No. But I mean any statements I make are my personal statements, and not necessarily a statement for the newspaper industrial board.

Senator WAGNER. I was not going to ask you to do that.

Mr. KELLY. There are eight members on the board including myself.

Senator WAGNER. That is for representing——

Mr. KELLY (interposing). For representing the employees and for representing the employers.

Senator WAGNER. Exactly. You have a ninth, too, did you say?

Mr. KELLY. We have a panel; that is, provision is made for a panel of five impartial persons mutually agreed upon, and to be drawn by lot, whenever there is a deadlock. Judge Nevin, of Dayton, sat on a recent case in Boston. Prior to that Judge Gaws, of Indianapolis, sat as the ninth member.

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Senator WAGNER. I want to ask you this because I think I am correct in my information. When you decide a question, say your board decides a question, it goes to the code authority for enforcement, does it not?

Mr. KELLY. We have not had any cases of refusal to comply with an award yet.

Senator WAGNER. I am speaking now and assuming that the award needs enforcement. You have not the power to enforce your award?

Mr. KELLY. Why, we have no more police power than the National Labor Relations Board, which is none.

Senator WAGNER. I understand that. Who do you rely upon to enforce it?

Mr. KELLY. In which case, that of labor or the employer?

Senator WAGNER. Supposing there was a controversy unsatisfactory to one side or the other. Say that labor is dissatisfied.

Mr. KELLY. If labor refused to abide by the award there would be no way to enforce it.

Senator WAGNER. Has not the code authority the right to enforce it?

Mr. KELLY. I am not so sure. That is a question that would have to go to the code authority. If it were an assenting newspaper who refused to comply with the award most certainly the publisher members on that board would take it up immediately with the code authority to enforce that award on the assenting member.

Senator WAGNER. I say supposing the workers are dissatisfied with the decision, if they wanted to appeal they would have to appeal to the code authority; would they not?

Mr. KELLY. No. The award of the newspaper industrial board is final, just in the same manner that the award——

Senator WAGNER (interposing). Without any enforcing power you have no power to enforce.

Mr. KELLY. We have the same power the National Labor Relations Board has.

Senator WAGNER. That is the reason——

Mr. KELLY (interposing). It would go through the code authority to the proper enforcement officials of the N. R. A.

Senator WAGNER. Who would that be?

Mr. KELLY. I am not an authority on N. R. A. I presume it would be the Compliance Division.

Senator WAGNER. I think you would find that you would have to ask your code authority.

Mr. KELLY. It would have to go through the code authority.

Senator WAGNER. That is what I am trying to bring out. It would have to go through the code authority. And are there any labor representatives on the code authority?

Mr. KELLY. No. And I think I see what you are trying to bring out, Senator, and it does not have a bit of bearing on this case.

The code authority would merely refer it to the Compliance Division, I presume, of the N. R. A.

Senator WAGNER. What I am trying to bring out, Mr. Kelly, is the body, the code authority, to whom this matter would have to be submitted after you decided the case, has no labor representatives on it. That is what I want to find out.

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Mr. KELLY. If you are trying to establish the fact that the award of the industrial newspaper board is appealable to the code authority on either side you are mistaken, Senator, because the award is final.

Senator WAGNER. What I say is if you wanted to have it enforced you would have to act through the code authority; wouldn't you?

Mr. KELLY. I presume so, but I am not a lawyer; I do not know. I presume the award would be referred to the N. R. A. Compliance Division through our code authority.

Senator WAGNER. Exactly; and I say that code authority would act——

Mr. KELLY (interposing). Hold on. Suppose on the other hand it did not go through the code authority, it would have to go through the union, so one way is just as expeditious as the other.

Senator WAGNER. Would it not in either case? Suppose the union desired compliance?

Mr. KELLY. Senator, you are getting into a hypothetical question, because in the newspaper industry the failure to abide by an award is an exception, and not the rule. We have had 34 years of an arbitration board whose decision is final. We could count on the fingers of one hand during those 34 years of this arbitration board any decisions that have not been abided by.

Senator WAGNER. How many cases have you before you?

Mr. KELLY. Of what?

Senator WAGNER. Of complaints.

Mr. KELLY. You mean the newspaper industrial board?

Senator WAGNER. Yes. I mean this board that will render labor decisions.

Mr. KELLY. The newspaper industrial board is under the code.

Senator WAGNER. Is that what you call it, the newspaper industrial board?

Mr. KELLY. Yes.

Senator WAGNER. How many cases?

Mr. KELLY. You mean pending now?

Senator WAGNER. How many have you had altogether?

Mr. KELLY. Oh, I would say we have had about 40.

Senator WAGNER. And how many have you disposed of?

Mr. KELLY. Twenty-five, I should judge. You understand that I would want to consult my files. I do not want to answer offhand, but I would say we have disposed of over half the cases that have come before us.

Senator WAGNER. And as to those not disposed of, can you give an estimate as to how long they have been pending?

Mr. KELLY. There are some, of course, that have been pending ever since the board was organized, which was about a year ago, but they are pending due to failure to comply with the rules and regulations of procedure. And in many cases—you will pardon me, if I say, Senator, that I am commencing to sense the source of the information from the questions you ask, and let me say in many cases——

Senator WAGNER (interposing). No; I read this in one of the periodicals. I will give you the source of my information.

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Mr. KELLY. In many cases it is failure to comply with the code of procedure, or failure of the interested parties to prosecute the case.

Senator WAGNER. I just wanted the facts.

The CHAIRMAN. Are there any other questions, Senator?

Senator WAGNER. I have none.

The CHAIRMAN. Mr. Funk.

STATEMENT OF ERWIN FUNK, MEMBER LEGISLATIVE COMMITTEE OF NATIONAL EDITORIAL ASSOCIATION

The CHAIRMAN. Your name is Erwin Funk?

Mr. FUNK. Yes, sir.

The CHAIRMAN. You represent the National Editorial Association?

Mr. FUNK. Yes, sir.

The CHAIRMAN. Where is your home address?

Mr. FUNK. Rogers, Ark.

The CHAIRMAN. And how many members in the National Editorial Association?

Mr. FUNK. We have about 5,000.

The CHAIRMAN. They constitute the editorial writers of the newspapers of the country?

Mr. FUNK. They are publishers mostly. They are not editorial writers. The name is just a little misnomer.

The CHAIRMAN. I see. You have a statement you would like to make to the committee. Would you like to submit your brief?

Mr. FUNK. It is very brief. It is not very long, Senator.

I want to state just a word in addition, and that is that I received a telegram this morning. Our headquarters are in Chicago. I wired a message in yesterday asking how many members of our association, or how many of our establishments were closed shops. I received a telegram this morning, and it is not contained in the brief here, but about 90 percent of our establishments are not closed shops, so that we do have a little overlapping in our membership with the A. N. P. A., represented by Mr. Kelly and Mr. Hanson.

In my own home State of Arkansas we have 10 newspapers members of our State press association and of the National Editorial Association, which are also members of the A. N. P. A.

I might say that last year I was State administrator for Arkansas for the Graphic Arts Code, and that I have for 40 years been a small-town publisher. I am a past president of the National Editorial Association, and I am appearing as a member of the national legislative committee of that organization. The National Editorial Association has a membership of 5,000 small-town weekly and daily newspapers. Through its affiliations with the various State press associations of the United States, it represents in an advisory and legislative capacity some 10,000 newspapers.

By direction of the officers of the National Editorial Association and the legislative committee, who have made a careful study of the provisions of the Wagner Labor Bill (S. 1958), I am appearing to protest against the passage of said bill.

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When the Wagner bill (s. 2926) was introduced last year, the N. E. A. vigorously opposed its passage, and a majority of the State press associations in their annual conventions, or through action by their executive and legislative committees, adopted resolutions opposing the passage of same. And this was done when Mr. Walter Allen was the president, from Brookline, Mass. In our Tennessee meeting of the Arkansas Press Association, and there was only one vote in favor of the bill last year.

Because among other changes, the present bill makes no exceptions for the smaller plants, whereas the 1934 bill exempted from its operation all plants employing less than 10 persons, the N. E. A. considers the present bill even more objectionable than the one it opposed a year ago.

While the bill attempts to convey the idea of "majority rule" by the employees in all collective bargaining, one finds that it authorizes the National Board to decide whether such majority shall be determined by employer unit, craft unit, plant unit or "other unit", without the consent of the employer or a majority of the employees. (Sec. 9-b.)

There is no proviso as to what will happen in case no faction or unit has a clear majority in any election or ballot for a closed shop, but it can be taken for granted that minority units will continue to demand elections and votes on a closed-shop policy for an indefinite period, completely destroying employee morals and making it impossible for an employer to make definite plans for future operations.

In an industry which experiences heavy seasonal and periodic swells as does the newspaper and commercial printing business, it would be quite possible and very probable, that under the protection of this proposed bill, these extra short-time employees would file demands with the National Board or its agents for election of new employee representatives. The Board "may" provide for hearings, and "may" take secret ballots by employees, but the bill allows the Board or its agents to adopt any other "suitable method" it may see fit to use. (Sec. 9-c.) They do not have to leave it to a vote of a majority of the employees.

It legalizes the "closed shop" either for the entire plant or for any special unit therein, and while the bill does not compel an employer to sign such agreement, it specifically states that no section of the bill may be employed to prevent or discourage strikes as a means of enforcing demands of employees. No employee could be warned or discharged for continued agitation for new elections or for a closed shop, regardless of how large the opposing majority.

Section 7 (3) specifically provides that it shall be considered an "unfair labor practice", subject to any or all of the penalties of the bill, for an employer to discriminate, when hiring employees, because of membership in any labor organization.

An employer who refused to hire an applicant presenting evidence that he belonged to a labor organization, would be open to the charge of practicing "unfair labor practices." Employers would have to carefully preserve a record of every applicant for work and be prepared to go before the Board or its agent at any time and place, they might summon him, to explain why he had not hired this or that applicant. There is no limit to the annoyance and expense any

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attempt to enforce this provision of the Wagner bill might cause an employer. We question the constitutionality of any Federal law that attempts to dictate to an employer who he may hire.

The N. E. A. considers as unfair to every employer and employee lines 18 and 19, page 12, section 10 (*c*), which read:

> In any such proceedings the rules of evidence prevailing in courts of law or equity shall not be controlling.

Witnesses need not be placed under oath; and while there is a clause making an employer liable for prosecution for perjury there is none holding an employee equally responsible. An employee would not be discharged for perjury in a labor hearing.

We hold as unconstitutional the provision in section 8 (*c*) which attempts to give precedence to this proposed act over the present or any future provisions of the N. R. A. code agreements or "other statutes of the United States."

Few of the smaller newspaper and commercial plants of this country have company or organized labor associations, and we do not believe that a Federal law to encourage their formation will at this time further the best interests of either employer or employee. We believe Federal endorsement of collective bargaining in these plants will weaken the morale and productiveness of the employees, will result in higher production costs and increased prices to the consumer, and will eventually result in a loss of employment and decrease of wages in the smaller units of our industry.

Most newspaper plants have several skilled employees in each department. In the smaller plants there may be but one or two in this class. Enforced collective bargaining by the more numerous but less efficient employees would undoubtedly result in an effort to bring down the wages of the skilled employees and increase their own. Again we have increased costs and decreased quality production, with the employer headed for bankruptcy. We believe it would tend toward centralization of industry in the large centers where skilled labor could protect itself.

As a matter of fact, we find nothing in the bill that will really benefit the great majority of employees in the newspaper or commercial printing industry in the average small town. Provisions are included which cannot but injure the industry and make it impossible for it to participate to the needed extent in the general return to prosperity.

We believe it gives to the national board undue authority which, through their lack of acquaintance with the internal problems of not only our own industry but that of thousands of other industries of the country, will result in great harm and loss to all of them. It is an utter impossibility for any Federal board to attempt to regulate the intricate relations of employer and employee in the smaller plants of any industry, and any effort to regiment large industries and small industries on the same basis is doomed to failure from the very beginning.

Newspaper wages and hours, outside the larger cities and industrial centers, are to a very large degree dependent upon local business conditions which vary greatly from year to year. It is quite as impossible for fixed wage scales to be arrived at under collective bargaining with employees over any definite period as it is to guarantee any fixed profit for the employer.

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Law cannot guarantee wage and hour protection for the employee unless at the same time it guarantees protection for the employer. In the Wagner bill, as we see it, there is not the slightest protection afforded the employer; and when the employer falls, the employee must of very necessity fall with him.

Therefore we beg this committee to report unfavorably upon the passage of the Wagner labor bill (S. 1958).

The CHAIRMAN. Will the representatives from Oklahoma please come forward?

STATEMENT OF CLIFFORD U. CARTWRIGHT, WEWOKA, OKLA., SECRETARY-CHAIRMAN EMPLOYEES' REPRESENTATION PLAN OF THE OKLAHOMA PIPE LINE CO.

The CHAIRMAN. Will you please give your full name?

Mr. CARTWRIGHT. Clifford U. Cartwright.

The CHAIRMAN. Where is your residence?

Mr. CARTWRIGHT. Wewoka, Okla.

The CHAIRMAN. Is this other gentleman accompanying you?

Mr. CARTWRIGHT. Yes, sir.

The CHAIRMAN. Is he a representative of the same association?

Mr. CARTWRIGHT. We have come here in connection with practically the same plan.

The CHAIRMAN. Whom do you represent?

Mr. CARTWRIGHT. I represent the Employees' Representation Plan of the Oklahoma Pipe Line Co., Wewoka, Okla.

The CHAIRMAN. What is your name?

Mr. WHITEHEAD. My name is Harold H. Whitehead.

The CHAIRMAN. Where is your residence?

Mr. WHITEHEAD. Seminole, Okla.

The CHAIRMAN. What is the name of the organization you represent?

Mr. WHITEHEAD. I represent the Employees' Plan of the Carter Oil Co., Seminole, Okla.

The CHAIRMAN. Are you an employee, Mr. Cartwright?

Mr. CARTWRIGHT. Yes, sir; I am.

The CHAIRMAN. What is your job?

Mr. CARTWRIGHT. Instrument man.

The CHAIRMAN. Are the employees of this company organized?

Mr. CARTWRIGHT. No, sir; except we have only this plan which I will speak about.

The CHAIRMAN. You may proceed.

Mr. CARTWRIGHT. I represent approximately 350 employees of the Oklahoma Pipe Line Co., being practically all of the employees in their employees' representation plan. This plan has been in effect for the past 6 years, and I have been an employee of this company for about 9 years.

I might add that last week I was elected to the chairmanship of this association for the fourth consecutive year, receiving a vote of approximately 98 percent majority.

I have served as secretary-chairman of the representation plan for the past 4 years, and I was requested to come to Washington by the employees association. I, therefore, asked the Oklahoma Pipe

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Line Co. to give me time off from my regular duties, with pay, and to pay my expenses, which they have allowed.

Mr. Chairman, I want to make it clearly understood that the Oklahoma Pipe Line Co. is paying all of my expenses, and allowing me regular pay.

I did not come here to argue the legal aspects, nor the constitutionality of the pending Wagner Labor Disputes bill, nor to make any attack upon the American Federation of Labor, or any other orgaization, but I came with a common man's view, and with the same spirit and objective as when I enter into our joint conferences, trying to reach a free and mutual agreement, fair to all, not condemning, but rather striving to preserve those grand principles of American citizenship. I do not know, maybe there are cases in need of such a stringent law, but in our case the price is high, and I believe the final result will be the loss of the plan through which we have gained the benefits and privileges which we now enjoy. It would end the steady progress of cordial labor relations, so greatly needed now in our social and economic advances, and tends to destroy merited ambition, which our plan holds as one of the primary factors.

We admit our plan is not perfect, but we have the right to revise and amend it at all times, which we sometimes do. But we do say that it does satisfy us, and that it does freely, kindly, and fairly represent the men, without any burden or pay for those services.

Every employee of the Oklahoma Pipe Line Co. has the right to belong to any organization of their own choosing, free from any form of restraint, intimidation, or coercion. This is one of the original fundamental clauses in our original agreement put into effect long before the N. R. A.

As I said to you before, the bill may be necessary for some organizations, and if this honorable committee believes that this bill should be enacted, I would like to suggest some amendments to the bill.

Under "Rights of employees", section 7, it reads:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

That is all right, but it does not, with all due respect to the unions as a whole, keep them from interfering, which I actually know has happened in many instances, not with my company in particular, but coming from Seminole, and Wewoka, in the heart of the oil fields of Oklahoma, I have seen that happen.

Even last week three or four men that belonged to the local there stopped several trucks of men and caused them not to work, and they in fact lost the time that they could have made.

Senator WAGNER. You mean they threatened them, or something of that kind?

Mr. CARTWRIGHT. Yes; with violence.

Senator WAGNER. You know that your employer has a remedy against that, and many employers have gotten injunctions against that sort of thing.

Mr. CARTWRIGHT. I know, but it does not keep them from it.

Senator WAGNER. If you have that right, why should it be reiterated somewhere else?

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Mr. CARTWRIGHT. I am not only speaking of violence there, but other activities.

Senator WAGNER. You mean they should not talk to your men at all?

Mr. CARTWRIGHT. We believe in fair play, and we do not take the undue right, as I might say, that I have seen them take.

Senator WAGNER. I will ask you this, if the workers are satisfied with that plan, there is certainly nobody that can persuade them to change it.

Mr. CARTWRIGHT. No.

Senator WAGNER. Are you ready to go so far in your ideas of freedom of speech that no other person ought to be permitted even to speak to them?

Mr. CARTWRIGHT. No; I don't mean that.

Senator WAGNER. What do you have in mind?

Mr. CARTWRIGHT. Undue influence; in other words, to threaten.

Senator WAGNER. As I say, you can secure injunctions against those things.

Mr. CARTWRIGHT. That is sometimes hard to do.

Senator WAGNER. It would be just as hard, whether it was provided for in this legislation or not. As I say, that right exists, and there have been injunctions issued all over the country, and some of them even went so far that they would not permit the union men to talk to the others, and in one case they prevented even the singing of religious hymns. That is how far our courts have gone in this injunction process.

Mr. CARTWRIGHT. The amendment I would like to suggest is taken from part of the amended Railway Labor Act of 1934, page 2, part 3, under "General purposes", which reads as follows:

> Representatives, for the purpose of this act, shall be designated by the respective parties without interference, influence, or coercion by either party.

In other words, it makes it binding, clearly, to both parties.

Senator WAGNER. What that means is this, that a worker cannot interfere with the railway organization in selecting its representatives to bargain, and the railway cannot interfere with the workers in selecting their representatives. That is what you want in here?

Mr. CARTWRIGHT. Yes; something like that.

Senator WAGNER. Would that satisfy you?

Mr. CARTWRIGHT. I believe it would bring out the point there, to make it equal to both parties.

Senator WAGNER. I think you are right. I don't think a worker should interfere with an employer in his efforts to organize a trade association, or a representative who is to represent the employer in dealing with the worker, just as the employer should not interfere with the workers in their selection of their representative. You and I are in accord on that.

Mr. CARTWRIGHT. You think such an amendment would be better if it were added to that?

Senator WAGNER. You mean the railway clause?

Mr. CARTWRIGHT. That part of the railway act I read; yes, sir.

Senator WAGNER. That was in the bill last year, but that is not what the employers want. They want something more than that.

Mr. CARTWRIGHT. I am not speaking from that side.

Senator WAGNER. I understand that.

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Mr. CARTWRIGHT. Then on down in paragraph 2 under "Rights of employees", it reads as follows:

To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That, subject to rules and regulations made and published by the board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

I would like to see, in line 24, the words "with him" stricken, so that it would read as follows:

An employer shall not be prohibited from permitting employees to confer during working hours without loss of time and pay.

As it is, it does not provide we can confer among each other.

Then, at the end of line 25 in that paragraph, add the words:

or from paying such other expenses actually incurred by the labor organization in negotiating for collective bargaining.

I believe we should have the right to bargain with our company for existence. I do not mean they should grant us unreasonable sums to carry on our organization, but I do believe that is a part of true collective bargaining, the same as bargaining for wages and working hours, to bargain for cost of holding elections, traveling expenses, and so forth.

Senator WAGNER. I believe you and I will agree on this proposition, that you could not be a very effective representative of the workers if you were paid for the services you rendered for the workers, by the employer with whom you are to bargain.

Mr. CARTWRIGHT. I do not quite understand. You mean if I draw a salary just for representing the men, is that right?

Senator WAGNER. Yes; you do not think you would be much of a representative of the worker in those circumstances?

Mr. CARTWRIGHT. He might be, I would not say, but he might not be.

Senator WAGNER. Isn't that a good deal analogous to this, if I am suing somebody and I am also paying the fees of the attorney of the man I am suing? Do you think he will represent his client or represent me?

Mr. CARTWRIGHT. That is a question.

Senator WAGNER. Do you think it is a question?

Mr. CARTWRIGHT. Well, he could be honest; I could not question that.

Senator WAGNER. I know there would be cases where he would be, but we have to take things as they are, and as a general thing you do not think he would be, do you?

Mr. CARTWRIGHT. Do you think it is wrong for us to receive compensation—what I mean, like expenses or time lost while representing the men during working hours?

The CHAIRMAN. Do you think, Senator Wagner, there is any objections to the bill making it clear that the representatives when they meet among themselves can be compensated, as well as when they meet the employer?

Senator WAGNER. It all depends whether you leave the loophole for the payment of money by the employer to representatives of the workers. To me, I just feel that you cannot be a very loyal representative of the workers if you are paid by the other side.

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However, I know there is something the committee is thinking about along that line.

The CHAIRMAN. I have a feeling that the employees in such a circumstance, when they begin to suspect that he is not a really honest representative, a good and true representative, they will dump him out or get a new organization.

Senator WAGNER. If I were to judge from this witness, I would not be afraid to trust him, but that is not the rule.

Mr. CARTWRIGHT. Thank you, Senator Wagner.

The CHAIRMAN. Haven't you got to rely somewhat upon evolution, that in these company unions they may pay the representatives, and if the representatives are influenced by it the workers themselves are going to turn them out and form another union?

Senator WAGNER. Yes; if they are able to do it.

Mr. CARTWRIGHT. Do you think the average working man under modern conditions, and so forth, could for very long swallow this company domination of representatives?

Senator WAGNER. They have been swallowing it.

Mr. CARTWRIGHT. Don't you think, today, with all of the other organizations about, they would not stand it for long?

Senator WAGNER. They have no alternative; they vote right at the plant; they are not permitted to vote for anyone, except someone employed there, and that gives the employer a control over the individual, and if he fights too hard he loses his job. Those elections are held under circumstances where it is very obvious it is not a free expression of a choice in many cases.

In some cases it is a free choice, and this bill does not in the slightest interfere where the representation is the free choice of the workers.

Mr. CARTWRIGHT. In the first part of the bill you do state that, but it is all lost in the various ramifications after that.

Senator WAGNER. In your opinion, the financial provisions are a little too restrictive.

Mr. CARTWRIGHT. In this case it is.

The CHAIRMAN. Is there any other objection you have to the bill?

Mr. CARTWRIGHT. Yes; there are some other objections to matters that I think should not be in there.

The CHAIRMAN. Of course, it is possible for somebody to start another organization.

Mr. CARTWRIGHT. Yes; of course, it is. Our plan is very simple, but it covers everything, I think.

The CHAIRMAN. While your elections are held annually, the representatives elected and the results of the election are more or less binding upon all of the employees until the employees use some other kind of union?

Mr. CARTWRIGHT. Yes; but they have the right under this agreement to step out. They can belong to another union, if they wish. We make no restriction there at all, and they can be represented in any way they want to.

The CHAIRMAN. Suppose they did join another union, couldn't they elect a majority of the workers, then call a meeting and turn themselves into a branch of the American Federation of Labor?

Mr. CARTWRIGHT. Yes, that is correct; it is up to them to belong to any other organization of their own choosing.

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Senator WAGNER. Could they, under your constitution and bylaws, elect an outsider to represent them?

Mr. CARTWRIGHT. Yes, sir.

Senator WAGNER. Somebody who was not an employee?

Mr. CARTWRIGHT. Yes, sir; they can if they so desire.

The CHAIRMAN. That is more liberal than any we have heard.

Mr. WHITEHEAD. May I read that provision to you gentlemen? It reads as follows:

> Future adjustments affecting wages, working hours, and working conditions shall be made in joint conferences between the employee representatives in the division or divisions affected and representatives of the management. If such joint conference fails to agree unanimously as to the fair adjustment the matter shall be referred to a joint conference consisting of all of the employees and management representatives of the company. If this joint conference fails to agree unanimously as to a fair adjustment, an appeal may be made to the board of directors. Should the decision of the board of directors be unsatisfactory to one-quarter or more of the members of such joint conference, the question may be submitted for arbitration to a board composed of three members, one chosen by the employee representatives, one appointed by the management representatives, and the third to be selected by mutual agreement of these two.

Senator WAGNER. Have you a provision there as to qualifications of representatives?

Mr. WHITEHEAD. I believe so.

The CHAIRMAN. You may proceed, Mr. Cartwright.

Mr. CARTWRIGHT. Under "Representatives and elections", in section 9, it reads as follows:

> Representatives designated or selected for the purpose of collective bargaining by the majortiy of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit.

I would like to insert there the President's own statement to the automobile industry in 1934, which would read as follows:

> Representatives designated or selected for the purpose of collective bargaining shall constitute a bargaining committee. If there is more than one group each bargaining committee shall have a total membership pro rata to the number of men each member represents. Such committee shall represent all of the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions.

If the President asked that much, and I think it is nothing but fair, then why should we not have it included in this legislation? It will give the right of equal representation to both sides, if there was an organized union, along with our union. In other words, the minority would be represented there, and if we were to be in the minority, we could have equal representation on this board, the same as the union, or vice versa.

Senator WAGNER. I do not want to take that up for discussion, but we cannot agree with each other at all. I think it would make collective bargaining ineffective.

I have examined your representation plan which has been handed to me, and I find there is no qualification in here as to who could represent you, except you could not elect an organization to represent you, it would have to be an individual; would it not?

Mr. CARTWRIGHT. No; we can have an organization to represent us.

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Senator WAGNER. I mean, instead of voting for an individual, could the members of your association say that a certain labor organization could be the representative for all of the workers?

Mr. WHITEHEAD. Yes, Senator Wagner; that is on top of the second page, in regard to nondiscrimination. The employees can select anyone to represent them.

Senator WAGNER. I believe you are right about that. That is a very liberal plan.

The CHAIRMAN. This plan of the Oklahoma Pipe Line Co. may be inserted in the record as a part of the statement of Mr. Cartwright, at the conclusion of his remarks.

You may proceed, Mr. Cartwright.

Mr. CARTWRIGHT. On page 10 of the proposed bill it provides as follows:

> That any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing.
>
> The board shall decide whether, in order to effectuate the policies of the act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

That is a little stringent, I believe.

Senator WAGNER. How would you word it?

Mr. CARTWRIGHT. I would do it this way—beginning with subparagraph (b), line 5, page 10, to read as follows:

> In case of disagreement the board shall decide by secret ballot in the plant or company concerned before the election of representatives whether, in order to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, finance unit, or other unit.

In other words, before they decide who shall be the representatives, they shall have the secret ballot before the election to decide, and I think that would be more fair.

Senator WAGNER. You mean to decide what the unit of representation shall be?

Mr. CARTWRIGHT. Yes; and who shall represent them.

Senator WAGNER. And as to what sort of election they shall conduct.

Mr. CARTWRIGHT. Yes; and not leave it to the board. After all, the employees are the ones affected and not the board, and they should have the right, in my opinion, to decide themselves.

In the case in California with the Shell Co. recently, they held an election, and over the entire State there was a vast majority of nonorganized voters, but in this particular plant or unit there was a decided majority, and the board ruled that constituted the entire State as one unit. That is wrong; if there was a majority there, and they wanted that one particular unit represented in organized labor, that was all right; but why bring in the others?

Further, beginning on line 13, subparagraph (c), it reads as follows:

> In any such investigation the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other method to ascertain such representatives.

I think in lines 16 and 17 the words "or utilize any other suitable method" should be stricken.

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What other method is more suitable than by secret ballot that is nothing but fair? "Any other method", could mean anything.

On page 11, under "Prevention of unfair labor practices", it reads as follows:

> The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice listed in section 8 affecting commerce. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise, except as provided in section 11.

Now, I think that certainly should be amended by striking out the word "agreement", and the words "or otherwise", so as to make it read, "May be established by code or law, except as provided in section 11."

As it now reads it defeats the very purpose of collective bargaining, in my opinion, and code or law is the only thing that should be provided in those cases.

The same occurs on down in subparagraph (b) on line 16, where the same protest should be followed so as to make it read "code or law."

On page 16, just before subparagraph (j), I would like to change paragraph (j) to paragraph (k) and insert a new paragraph (j), which would read as follows:

> *Provided*, That any person aggrieved by any order of the Board which would destroy a labor organization, such person shall have recourse to any district court, and the order of the Board shall not be effective pending such hearing.

Then follow with paragraph (j) as it is written and change to paragraph (k).

As I understand it, the circuit court does not take sworn evidence on anything before it. The Labor Relations Board will accept anything, even hearsay, which, in turn, must be accepted by the circuit court in making their decisions. We believe in the United States courts, the district court, they would have to bring positive sworn facts before that court to show that these things have happened. I do not believe a labor organization should be destroyed without such a hearing.

I believe that is all I would like to say, but I would like for those amendments to be considered by you gentlemen.

The CHAIRMAN. Thank you, Mr. Cartwright. We will be glad to consider them.

(The joint agreement for the representation plan of the Carter Oil Co., presented by witness, is as follows:)

JOINT AGREEMENT ADOPTED BY THE CONFERENCE OF REPRESENTATIVES OF THE CARTER OIL CO. AND THE EMPLOYEES, HELD AT TULSA, FEBRUARY 24, 1920, ALL AMENDMENTS INCLUDED

April 24, 1934

1. PURPOSE AND SCOPE

This agreement makes provision whereby elected representatives of the employees shall meet in joint conference with representatives of the management to discuss and to settle all matters of joint interest, such as hours, wages, working conditions, and the adjustment of grievances, subject to review when necessary as provided in paragraph 4 below.

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2. ANNUAL ELECTION

An election shall be held annually under the sole direction of the employees for the selection by secret ballot of those who, during the succeeding year or until their successors are elected, shall be the accredited representatives of the employees at all joint conferences and in all matters of collective bargaining and collective dealing between the company and its employees, excepting such employees as may choose to be otherwise represented.

All employees are entitled to vote, excepting those identified with the management, such as officers, managers, superintendents, heads of departments, foremen, and clerical forces.

3. JOINT CONFERENCES

A joint conference of all employee representatives thus elected and management representatives shall be held annually at the call of the president or vice president at a time and place satisfactory to the employees. In addition to this annual conference, a conference of such employee representatives and management representatives in each division shall be held at least quarterly to consider any matters of mutual interest, with such additional joint conferences of one or two or more divisions as the president or vice president or employee representatives of the divisions may request. At all joint conferences the number of management representatives shall not exceed the number of employee representatives.

4. ADJUSTMENTS BY JOINT CONFERENCE

Future adjustments affecting wages, working hours, and working conditions shall be made in joint conferences between the employee representatives in the division or divisions affected and representatives of the management. If such joint conference fails to agree unanimously as to a fair adjustment the matter shall be referred to a joint conference consisting of all of the employee and management representatives of the company. If this joint conference fails to agree unanimously as to a fair adjustment an appeal may be made to the board of directors. Should the decision of the board of directors be unsatisfactory to one quarter or more of the members of such joint conference the question may be submitted for arbitration to a board composed of three members—one chosen by the employee representatives, one appointed by the management representatives, and the third to be selected by mutual agreement of these two.

5. RIGHT OF APPEAL

Any employee who feels that he has been unjustly treated or subjected to any unfair conditions has the right of appeal to the division superintendent in the production department or to the head of such department as the employee may belong to and the higher officials of the company in their order, provided he shall first seek to have the matter adjusted by conference in person or through his regularly elected representative with his immediate superior. Before such appeal shall be taken beyond the division superintendent or the head of a department, it shall first be considered in a joint conference composed of the employee representatives of the district affected and an equal number of representatives of the management. In case such conference fails to agree unanimously as to a fair adjustment, an appeal may be made as above indicated.

6. NONDISCRIMINATION

Each employee representative shall be free to pursue his duties in accordance with his best judgment without fear that his individual relations with the company will be affected by any action taken by him in good faith in his capacity as representative. Each representative shall have the right to take the question of an alleged personal discrimination on account of his acts directly to the management of their order.

No discrimination shall be made by the company or its employees against any employee on account of membership or nonmembership in any church, society, political party, fraternity, or union.

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AMPLIFICATIONS OF THE JOINT AGREEMENT ADOPTED BY EMPLOYEES AND MANAGEMENT OF THE CARTER OIL CO.

As an amplification of paragraph 4 (wage adjustments) of the joint agreement, and as the accepted basis for consideration of wage adjustments, it is the company's policy to pay at least the prevailing scale of wages for similar work in the community. In making such adjustments consideration is also given to changes in the cost of living as reported by the Bureau of Labor Statistics of the United States Government.

As an amplification of paragraph 5 (right of appeal) of the joint agreement it is agreed between the employees and the management that as to discharge without notice:

A. The following is a list of offenses for which an employee may be discharged without further notice:

1. Violation of any law. Special attention is called to the following:

(*a*) Carrying concealed weapons; fighting or attempting bodily injury to another; drunkenness; conduct which violates the common decency or morality of the community.

(*b*) Stealing, making fradulent records, or malicious mischief resulting in the injury or destruction of property of other employees of the company.

(*c*) Cruelty to animals the property of other employees or of the company.

2. Violation of the following safety rules:

(*a*) Carelessness in regard to accidents and safety of fellow employees.

(*b*) Violation of rules governing employees in repairing or oiling of moving machinery.

(*c*) Smoking or carrying matches other than safety matches or having open lights or fires within prescribed limits where such practice is forbidden.

3. Failure to immediately report accidents or personal injuries to delegated authority wherever possible.

4. Insubordination (including refusal or failure to perform work assigned) or use of profane or abusive language toward fellow employees or officials of the company.

5. Absence from duty without notice to and permission from immediate superior, except in case of sickness or cause beyond his control of a character that prevents his giving notice.

6. Harboring a disease which on account of his own carelessness will endanger fellow employees.

7. Falsifying or refusing to give testimony when accidents are being investigated, or false statements when application for employment and physical examination is being made.

8. Neglect or carelessness resulting in damage to company property or equipment.

9. Obtaining material at warehouses, plants, or stations or other assigned places on fraudulent orders.

10. Sleeping while on duty.

11. Offering or receiving money or other valuable consideration in exchange for a job, better working place, or any change in working condition.

12. Introduction, possession, or use on the property of the company of intoxicating liquors.

13. Habitual use of habit-forming drugs or their introduction or possession on the property of the company.

B. For other offenses, not on the above list, an employee shall not be discharged without having first been notified that a repetition of the offense will make him liable to dismissal. Such notice may be given by the foreman or superintendent, who shall forthwith send a copy of such notification through channels to the president.

C. Foremen or superintendents finding that the interests of the business require the suspension of any employee for any offense, or require his dismissal for the commission of any of the posted list of offenses or for the commission of any other offense after warningi notce has been given, shall report the case fully through channels to the president. The president, after investigation, may approve the actual or proposed suspension, or arrange to transfer the employee, or if the facts warrant, discharge him. In case an actual suspension is not approved, the employee shall be reinstated with full pay for the period of suspension.

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D. A list of suspensions and discharges together with the reason therefor shall be compiled in the president's office monthly.

NOTE.—This is to be posted in stations and other suitable places throughout the field.

The CHAIRMAN. Mr. Whitehead, do you desire to make a statement?

Mr. WHITEHEAD. Yes, Mr. Chairman; I would like to say a few words.

STATEMENT OF HAROLD H. WHITEHEAD, SECRETARY-CHAIRMAN EMPLOYEES' REPRESENTATIVES OF THE CARTER OIL CO., SEMINOLE, OKLA.

The CHAIRMAN. Where do you live, Mr. Whitehead?

Mr. WHITEHEAD. Seminole, Okla.

The CHAIRMAN. By whom are you employed?

Mr. WHITEHEAD. The Carter Oil Co.

The CHAIRMAN. In what capacity?

Mr. WHITEHEAD. I am a pumper in occupation, and I am our secretary-chairman of the employees' representatives of my division.

The CHAIRMAN. You have a similar organization to the one described by the last witness?

Mr. WHITEHEAD. The same thing, practically.

The CHAIRMAN. How many members are there in that organization?

Mr. WHITEHEAD. In the State, 1,150 employees.

The CHAIRMAN. Is your testimony similar as that of the last witness?

Mr. WHITEHEAD. Yes; other than that, I would like to point out the benefits, since the question was asked as to how much authority and how far the employees' representatives would go in order to get the benefits in settling grievances. We have settled these grievances from time to time, and no employees have lost their jobs on account of that. We have had the plan over 14 years.

The CHAIRMAN. You have had entire satisfaction in settling grievances?

Mr. WHITEHEAD. Yes, sir.

The CHAIRMAN. The plan is satisfactory to your men?

Mr. WHITEHEAD. Yes, sir. I was elected February 28 by the employees' representatives as their secretary through balloting in locked balloting boxes.

The CHAIRMAN. I suppose you are appearing here for the purpose of trying to have this bill, if enacted, to have no provisions that would affect your organization?

Mr. WHITEHEAD. Yes, sir; the same as Mr. Cartwright represented.

The CHAIRMAN. We thank you for your appearance before us, and we will consider your suggestions.

The labor men who are here will please come forward, those representing the workers in Pennsylvania.

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STATEMENT OF THOMAS BRESLAN, REPRESENTING BEAVER LODGE OF THE AMALGAMATED ASSOCIATION OF IRON, STEEL, AND TIN WORKERS, LODGE NO. 200, ALIQUIPPA, PA.

The CHAIRMAN. Will you state your full name for the record?
Mr. BRESLAN. My full name is Thomas Breslan.
The CHAIRMAN. Where do you reside?
Mr. BRESLAN. Aliquippa, Pa.
The CHAIRMAN. By whom are you employed?
Mr. BRESLAN. The Jones & Laughlin steel plant.
The CHAIRMAN. Are you employed there now?
Mr. BRESLAN. Yes, sir.
The CHAIRMAN. Accompanying you here are some other gentlemen?
Mr. BRESLAN. Yes; six, altogether, of us.
The CHAIRMAN. Do you want to put their names in the record?
Mr. BRESLAN. Yes, sir.
The CHAIRMAN. Will you please state their names?
Mr. BRESLAN. They are Harry Phillips, Oliver Atalah, Mike Keller, Tony Riccitelli, and John Feola.
The CHAIRMAN. You are all workers in this plant, and you belong to what organization?
Mr. BRESLAN. We belong to the Amalgamated Association of Iron, Steel, and Tin Workers, Beaver Valley Lodge No. 200.
The CHAIRMAN. How many members have you in that lodge?
Mr. BRESLAN. We have 5,450 members, signed up.
The CHAIRMAN. How many are there in the whole plant?
Mr. BRESLAN. Six thousand five hundred, the last statement we had.
The CHAIRMAN. Have you had an election for the purpose of determining who is to represent the workers there?
Mr. BRESLAN. No, sir.
The CHAIRMAN. Why has there not been any election?
Mr. BRESLAN. The trial board turned it down in Aliquippa, the labor board.
The CHAIRMAN. The labor board in your district?
Mr. BRESLAN. Yes.
The CHAIRMAN. Is there any other group negotiating for collective bargaining?
Mr. BRESLAN. The company union representatives up there.
The CHAIRMAN. They were here yesterday?
Mr. BRESLAN. Yesterday or the day before.
The CHAIRMAN. And they claimed to represent a majority of the workers?
Mr. BRESLAN. They claim to represent 90 percent.
The CHAIRMAN. You claim to represent a majority of the workers?
Mr. BRESLAN. And we have the books and papers here to show it.
The CHAIRMAN. When was the last election held?
Mr. BRESLAN. In the company? It was last June.
The CHAIRMAN. Did the members of your organization vote in that election?
Mr. BRESLAN. They had to vote.
The CHAIRMAN. Did you elect any of your members?
Mr. BRESLAN. We were not organized at that time.

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The CHAIRMAN. You have been organized since last June?

Mr. BRESLAN. Since July; we started.

The CHAIRMAN. When is the next election?

Mr. BRESLAN. I could not tell you when it is.

The CHAIRMAN. They have one once a year?

Mr. BRESLAN. One once a year, I believe.

The CHAIRMAN. Can't you go in at the next election and ballot for your men and elect them, and then take over the whole organization?

Mr. BRESLAN. We will pretty near have the whole employees in the mill anyhow by that time.

The CHAIRMAN. I take it you think your employers ought to negotiate with you rather than with the representatives who appeared here 2 or 3 days ago. Is that right?

Mr. BRESLAN. That is right.

The CHAIRMAN. Isn't that an easy way for you to get a hold, in the next election to elect your own men, then call a meeting of all of the employees and show that you are in control of a majority of the plant?

Mr. BRESLAN. The company representatives are not allowed to hold any meetings with the men.

The CHAIRMAN. If you have a majority and get control of all of the representatives, you can call a meeting, you haven't got to be bound by the company?

Mr. BRESLAN. Yes; you are bound by the company. These representatives down here are claiming 90 percent, and they never call any meeting.

The CHAIRMAN. What will there be at the next election, which will come in June, perhaps, in 2 or 3 months, to prevent you from electing your own men, then, after they are elected, call a meeting and start your organization?

Mr. BRESLAN. We have started our organization now.

The CHAIRMAN. Then you have your regular organization, and you can have it to do your collective bargaining?

Mr. BRESLAN. If you take a ballot, you are voting for a company union. It says that right on the bottom.

The CHAIRMAN. The moment your representatives who are elected are all from your union, you can then be in control of the representatives for negotiating with your employers, and you can go to the employers and show that you represent a majority of the workers and all of the representatives are elected by your union.

Mr. W. C. HUSHING (registration representative of the American Federation of Labor). Mr. Chairman, may I say something here?

The CHAIRMAN. Certainly.

Mr. HUSHING. I want to explain what is in point here. On last Tuesday certain employees of Jones & Laughlin Corporation came from Aliquippa, Pa., and appeared before this committee as representatives of the company union, and they claimed to be representing 90 percent of the employees.

The CHAIRMAN. They were elected last June?

Mr. HUSHING. So he states, but I do not know anything about that. They came here without any instructions whatsoever from the employees, because I understand from these men that the company union representatives are not permitted to hold meetings of employees but only meetings of the representatives held with officials

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of the company, and at that time they received their instructions from the officials of the company.

Now, what may happen next June is not in point here. The committee is considering reporting out a bill and these company union representatives came here at the instigation of the company and made certain statements which these gentlemen desire to refute.

The CHAIRMAN. All you want to do, then, is to show that they do not represent a majority of the employees, and that you are in favor of this bill?

Mr. HUSHING. Yes, sir.

The CHAIRMAN. I thought you wanted to get recognized as the representatives of the employees for the purpose of collective bargaining.

Mr. HUSHING. The point is they do not want these company unions to come down here and make it appear the employees of that company are not in favor of this bill, when they have the books with them, if you care to look at them, to show that they have 5,450 men in the employ of this company, and 500 additional not employed on account of lack of work.

The CHAIRMAN. The point I am making is, if you have that number of men you ought now to be doing the collective bargaining and not the other organization.

Mr. HUSHING. Certainly, that is correct.

Mr. BRESLAN. They are doing that, and they are coming down with a statement against the Wagner bill, also.

The CHAIRMAN. They were asked in the examination if they represented the employees, and they stated they did not, that there had only been a meeting of the representatives and they were only instructed by the representatives. There is no evidence from any of the groups that there was any instruction that they represent all of the employees. I do think they gave the impression they were instructed to appear for all of the employees.

Senator WAGNER. You had no meeting of any kind where you gentlemen had a chance to express your views about this legislation?

Mr. BRESLAN. That is correct.

The CHAIRMAN. They practically all admitted that; but they did inferentially lead you to believe all of the employees were in favor of continuing their present plan.

You say there are 5,000 of your employees that are in favor of the bill and who repudiate the statements made by the others that the employees want to continue the union. Is that right?

Mr. BRESLAN. That is correct.

Senator WAGNER. You have the book with you to prove the membership in your organization?

Mr. BRESLAN. Yes; that is correct.

Mr. RICCITELLI. Mr. Chairman, about the next election, they might hold the next election in the mill, and the election will be on company property; all of the employees will be driven to the polls, whether they want to vote or not. There has been discrimination from the beginning; and, in fact, there are even men fired for nothing; and, in fact, we have some cases where men have been fired just lately for the least little thing, without any reason whatsoever. Our men are scared; and they have—this company—spies all over the street following us.

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The day they found we were going to start to Washington the company fellows were following me personally, and I can verify that statement, from corner to corner until I got into the car and we started on our journey from there over here.

The CHAIRMAN. That is the reason why this bill is being agitated and being offered here, because it is seeking to prevent men from being coerced by the employers because they choose some other kind of organization than the employers want.

Mr. RICCITELLI. We have two men here who were beat up by the company men.

The CHAIRMAN. Mr. Phillips, did you want to make a statement?

Mr. PHILLIPS. I want to say we would never get a fair count on an election in the mill under present conditions that exist there. To explain why, the representatives that are now in power are switched around to count every one of the votes, together with the timekeepers, who are just young fellows.

The CHAIRMAN. When this bill is passed you will have an opportunity to ask for an election, under the terms of the bill, that will be free from domination of the employer. That is one of the reasons why you favor this bill, as I understand it?

Mr. PHILLIPS. Yes, sir; it is.

Mr. BRESLAN. We want to show you they have not got 90 percent, and they are against the bill, while we have over 5,000 men that are in favor of it.

The CHAIRMAN. As I recall, they gave evidence that there was no such substantial number of fellow employees connected with an organization other than their own.

Thank you, gentlemen, for your appearance, and the information you have given us.

At this time I desire to have inserted in the record a telegram I have received today, together with a note which is attached thereto, in connection with the hearing on this bill.

(The said telegram and note attached thereto are as follows:)

MARCH 29, 1935.

WILLIAM CASH,
Willard Hotel, Washington, D. C.:

Eight hundred and ninety-one for strike; 11,516 against strike. Please call me 11:30 a. m.

FRED CLIMER.

THE WILLARD HOTEL,
Washington, D. C.

Mr. CHAIRMAN: At yesterday's hearings a committee representing the Goodyear Industrial Assembly, who were here to oppose the Wagner labor disputes bill, brought up the point that the labor union of the Goodyear Local 18282, and which was represented here by John D. House, had asked for a strike vote to be taken Sunday, March 31.

The employees asked that such a vote be taken also. Which was done by the Goodyear Industrial Assembly by a secret ballot. The results were 811 for a strike and 11,516 against.

The union's only grievance was refusal of recognition by the Goodyear management.

THE GOODYEAR INDUSTRIAL ASSEMBLY OF AKRON, OHIO,
Employees of the Goodyear Tire & Rubber Co., Committee.

The CHAIRMAN. The hearing will be adjourned until 10 o'clock next Monday morning.

(Thereupon, at 5:15 p. m., the hearing was adjourned until Monday, Apr. 1, 1935, at 10 a. m.)

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NATIONAL LABOR RELATIONS BOARD

MONDAY, APRIL 1, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met at 10 a. m., in room 318 Senate Office Building, Washington, D. C.

Present: Senators Walsh (chairman), Black, Murphy, Murray, and Metcalf.

Also present: Senator Wagner.

The CHAIRMAN. The committee will please come to order. Will Mr. Lederer please come forward.

STATEMENT OF E. R. LEDERER, CHAIRMAN OF LABOR SUBCOMMITTEE OF THE PLANNING AND COORDINATING COMMITTEE FOR THE PETROLEUM INDUSTRY

The CHAIRMAN. What is your full name, please?

Mr. LEDERER. E. R. Lederer.

The CHAIRMAN. And what is your residence?

Mr. LEDERER. At the present time, Washington, D. C.

The CHAIRMAN. What is your permanent local residence?

Mr. LEDERER. Fort Worth, Tex.

The CHAIRMAN. You are vice president of the Texas & Pacific Coal & Oil Co.?

Mr. LEDERER. Yes, Mr. Chairman; but I appear here for the planning and coordination committee of the petroleum industry, which is the code authority of the petroleum industry.

The CHAIRMAN. Do you represent all of the members of that code authority?

Mr. LEDERER. Yes, sir. I do not represent the individual company at the present time, at all.

The CHAIRMAN. How many persons are governed by that code authority?

Mr. LEDERER. One million two hundred thousand employees.

The CHAIRMAN. How many different companies?

Mr. LEDERER. Supposedly all of the enterprises in the industry, which is something over 3,000.

The CHAIRMAN. You desire to make a statement in opposition to this bill.

Mr. LEDERER. Yes, sir.

The CHAIRMAN. You may proceed with the statement.

Mr. LEDERER. Mr. Chairman, and gentlemen of the Senate Committee on Education and Labor, I have been requested by the plan-

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ning and coordination committee, representing the code authority for the petroleum industry, to present to you the attitude of the petroleum industry toward the Wagner bill, S. 1958.

As you gentlemen know, the petroleum industry is composed of many thousand units operating either in one, several, or all branches of the industry; that is, production of crude oil, transportation, refining, and marketing. The size of these units varies from the small producer on one lease to large companies owning thousands of barrels of daily production, distributed all over the producing fields of the country. Only large companies can engage in transportation of crude oil, because it requires a very large investment. In refining we find plants ranging from 50 barrels a day crude capacity, with the most modern up-to-date efficient equipment, which represent investments of many millions of dollars. In the marketing branch, we find the small filling station operator, medium-size distributors, generally covering just one or two States with either wholesale or retail operations or both, and the large distributors, operating in many or most of the 48 States of the Union. The industry has 320,000 oil wells producing under proration—in most districts—about 2½ million barrels of crude a day. Of these wells, 250,000 represent settled production, averaging not much over one barrel of crude per well a day, and employing approximately 60 to 70 thousand men. These wells are the backbone of the industry, because they will produce a long time after the 70 thousand flush-wells have exhausted their production.

We have about 640 refineries and 313,000 retail outlets, beside 20,000 wholesale distributing plants. All these units are owned by individuals or smaller companies and only 22 corporations can be considered as the real major integrated companies, covering with their various operations the entire United States.

This industry employs approximately 1,200,000 persons, receiving a total monthly pay roll of about $130,800,000. It is the only industry which, even during the depression, has maintained its sales level practically even and has shown a small increase during the last 2 years. I am also safe in stating that this industry has always maintained more regular operations and fewer disruptions in employment than any other industry. Labor relations in the industry have always been harmonious. Strikes of considerable size have been unknown, and only since the inception of the code have we experienced sporadic strikes in the industry. This very fortunate relationship between employer and employee in our industry can be attributed only to the consideration and understanding which employers and employees have shown for each other.

The majority of our employees make a fair living, and I know, especially during the last lean years, in the smaller units, employer and employee shared frequently the income from the business so that both could subsist. Even the medium-size and larger units have continued their operations, in spite of heavy losses, often only in order to maintain their employees on the pay roll. The labor turnover in our industry is very small, with the exception of a few migratory crafts like drillers, rig builders, and part of our unskilled labor. The skilled employees, obtaining comparatively high wages, are settled and stay with their companies and employers.

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Under the National Recovery Act the industry has its own oil administrator, the Secretary of the Interior, who delegates most of the details of supervision to the Petroleum Administrative Board. Our labor conditions are regulated by the Petroleum Labor Policy Board. I am glad to state that during the 18 months of the existence of the Petroleum Code our relations have been mostly harmonious and based on mutual understanding.

Our industry, like all other industries, although unaccustomed to regimentation before the advent of the code, managed to adapt itself quickly to the new trend, and has cooperated in most cases whole-heartedly with the administrator. We have reabsorbed, during the year of May 1933 to May 1934, 217,200 persons, an increase in employment of 39.5 percent, and taking May 1929 as 100 percent, our employment has increased to 107.7 percent. The pay roll is practically equal to the 1929 pay roll, and in "real wages", it is 107.2 percent. In 1930 the percentage of labor costs of total refinery operations, for instance, was 17.24 percent. In the first 3 months of 1933 it was 27 percent, and in the first 3 months of 1934, 32 percent. The average working week of all our employees in the different branches is approximately 39 hours, ranging from 36 hours in the operating branches to 48 hours in filling stations. Our minimum wages are almost at the top of all code wages, and wages for skilled men are based on a percentage average of about 80 percent of 1929, or peak, weekly earnings.

Labor disputes in our industry since the enforcement of the code have not been, in most cases, of a serious nature. Of course, it is only human that certain employers insisted on their former paternalistic privilege of dealing unhampered by outside influence with their employees. Others again were confronted with an increase in operating expenses which ranged anywhere from 20 to 40 percent, in the face of very low values of the finished products, produced from crude, that they either had to cease their operations or take their employees in their confidence and arrange with them, through collective bargaining, hours and wages not exactly in conformity with the code. Complaints about such arrangements came mostly from outside sources, and when brought to our attention could be settled under section 4 (a), article I of the Petroleum Code, providing exceptions for such extreme conditions. Sweat-shop conditions have never existed in our industry and "stretch-out" or "free-wheeling", over which complaints have been made very frequently, has been explained by respondents in most cases as being due either to extreme economic conditions, changes in operating conditions, or technical progress, which will never cease and very often means the end of an old-established handicraft.

I have imposed on your patience in order to give you this very brief picture of our industry so you can appreciate that labor conditions in our industry, as a whole, have been favorable, and labor organizations have not recruited many members in the four branches of the industry. Even at the present time the many local unions which have been formed under the auspices of the International Association of Oil Field, Gas Well, and Refinery Workers of America have a comparatively small membership, and are concentrated only in the larger centers of the industry, which are not very numerous.

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In most of the major companies the employees have formed councils or representations which are not commonly called "company unions"; their employees receive 1 or 2 weeks' vacation at full pay according to length of service; most companies of any size at all have group insurance and other benefits for their men, safety organizations, and are most anxious to maintain healthy and safe working conditions. Large and small producers have always maintained houses on leases. In the larger producing areas you will find well-equipped camps, and smaller or larger colonies near refineries, when they are situated any distance from the nearest town, where the employees live in comparative comfort, at low rent and a very nominal charge for utilities.

Naturally, we have no accurate information, but before the Cole committee Mr. Fremming, president of the International Oil Workers Association, stated that his association numbered 81,000 members, which would be only from 6 to 7 percent of all persons employed in the oil industry; but probably several thousand service-station employees belong to Service Station Attendants Unions in a few of the large cities, and a number of mechanical employees belong to craft unions.

The majority of the industry has not shown serious resistance to section 7, article II of our code, which is identical with section 7 (a) of the National Industrial Recovery Act. From my experience on the labor subcommittee, I know that violations have been mostly based on misinterpretation or the wrong attitude by either labor or local management, and through the good services of the petroleum labor policy board and our labor subcommittee, we have been able, in most cases, to arrange an amicable settlement.

I am not qualified to enter into the legal aspects of the Wagner disputes bill. I can only look at it from the practical point of view, and after studying the bill, visualize its consequences in our own industry. The President probably recognized that the petroleum industry was unique and different in its many ramifications, and placed it under a separate administration; therefore, a standardization of all industry as proposed by this bill seems practically impossible to us. We have found it necessary so many times in order to maintain smaller units and employment therein alive, to ask for and receive exceptions, that an iron-clad law like this bill proposes will mean the death knell of many small enterprises and consequent unemployment. The larger units cannot absorb all these men who will be thrown out of work, and these men with their families will increase the number of unemployed and become a burden to public charity.

I can further interpret this law only as placing the United States Government behind the American Federation of Labor, that is, in our industry, the International Oil Workers Union, representing at present only a very small minority of our employees, will become the ruler of labor and influence all labor relations, in spite of the statement of the N. R. A. Administrator that "this administration is not to be used for unionizing any industry." (Release No. 5, June 20, 1933.) The "company union" will be outlawed, and all the benefits which such organizations actually have for their employees will cease and the men enjoying them will be deprived of these advantages.

Of course, I realize other bills pending which are intended to protect them ultimately against unemployment and private old-age

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relief, et cetera, but I am not so sure these general relief bills will be an adequate compensation for the loss these men will suffer. It is only natural that existing labor organizations will take the fullest possible advantage of this bill and force, by all means, those employees in the industry who do not belong to the union at present to join. We have heard about intimidation and coercion by employers and have been branded as violators and lawbreakers so many times that this bill will impair our integrity and honesty only further and very unjustly so. I can assure you from my own experience and knowledge that coercion and intimidation have been applied much more frequently and often very forcefully by employees who have been harangued by fiery orators, often not even belonging to the industry, and I am afraid such methods will be used to much larger degree in the future if this law goes into effect in its present form. Not that it is the intent of the law nor the intent of the officials of the Oil Workers' Union, but they cannot control ambitious and misled members far away from headquarters.

Subdivision 3 of section 7 of the bill states that it is illegal for an employer to discriminate in hiring men, but goes on to state that a closed-shop contract is not discrimination; this seems very inconsistent to us, and certainly can be interpreted as opening the door for the controversial "closed shop" contract.

The "majority rule" propounded in this bill seems to us very un-American and the forerunner of the "closed shop", which, according to previous statements made by highest authorities of the National Recovery Administration, was supposed to "have no agreed meaning and no place in the dictionary of the National Recovery Administration."

It certainly seems to be coercion of the cruelest kind to force a minority, unwilling to pay the dues and submit to the bylaws of labor organization, either to join in order to be permitted to earn a livelihood or to be deprived of a job.

In the strife for superiority which is bound to come, the old-established and fine spirit of loyalty to the company and its products, which, in my opinion, is one of the greatest assets an employer could create and possess, will be extinguished. Instead of it, a broad and deep gap will be forced between employer and employee, and this bill will have to bridge it. I do not believe it will be successful in accomplishing this, because the harder the law infringes on our idea of liberty the more firmly people will turn to evasions, subterfuges, and chiseling, which were created by previous impossible and unpopular laws.

Subdivision 2 of section 8 of this bill would work a hardship on the industry as a whole should the Board be in the least unfriendly and rule in such a manner that all employees would be conferring during the full working hours on all working days with the management without arriving at a settlement, which, in fact, would constitute a strike financed by the company.

Subdivision 3 of the same section would work a hardship on any minority for the same reasons. They may present grievances but cannot elect representatives or make agreements.

Subdivision B of section 9 could be used by an unfriendly Board to cause independent unions or nondominated existing "company

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unions" to lose an election and create a condition where the industry would not know with which organization to conduct negotiations.

Subdivision D of section 10 would tend to keep disputes constantly open, harass the employer and deprive him of time and thought to do constructive work and build up his business, which is most necessary in order to keep employees on the pay roll.

Subdivisions F and G of section 10 throw all established practice and precedents overboard and vest this Board or its local boards and agencies it can create with legal authority and power of enforcement superior to that of any existing labor board or agency.

This bill can be so interpreted that nothing can prevent strikes; it will not be necessary for employees to give notice or consent to attempt an amicable settlement before striking.

The decisions of the Board are not controlled by legal evidence, but such evidence as the Board may develop can be based on rumors, hearsay, exaggerations, and so forth. The courts will have to accept such evidence developed by the Board or its agencies and therefore cannot consider questions of law.

We consider it as very arbitrary that the Board should be empowered to amend complaints and award restitutions without regular court proceedings provided by constitutional laws.

Under subdivision C of section 12, it seems that industry is bound, but labor is explicitly released from being amenable to the proposed law.

Section 13 permits unnecessary meddling in private business, could cause the flouting of trade secrets, and result in making public knowledge all details of the employer's business which unscrupulous competitors might be very anxious to know; in fact, this section might place all industries in the status of public utilities.

Section 15 simply places employers at the mercy of any labor group which might find means to take undue advantage of the provisions of the bill.

Samuel Gompers himself, the greatest leader labor ever had, stated on August 20, 1922:

> Whenever governmental industrial courts or tribunals are set up, the principle of litigation is substituted for the principle and practice of negotiations, conciliations, and joint agreements, which obtain wherever voluntary relations exist between workers and employers. A spirit of enmity and suspicion is substituted at once for the spirit of cooperation, conciliation, and mutual agreement * * *. This principle is wrong and the practice is disastrous.

It seems that all the burden under this bill is placed on the industry and the employers. Our existing laws, I am told, have not much power to reach labor organizations, in case they should abuse their economic power and strength this bill intends to give them. The American Federation of Labor and their affiliated or subordinate labor organizations are voluntary unincorporated associations. They are accorded certain privileges and exemptions in various acts of Congress, though suable according to decision of the Supreme Court in the case of the *United Mine Workers of America* v. *Coronado Co.*, in which Chief Justice Taft observed that it would be unfortunate that an organization with as great power as this international union, with a membership of 450,000 at that time, could use its assets free from liability for injuries by torts committed in course of such strikes and that such organizations are suable in the Federal courts for their acts and that funds accumulated to be

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expended in conducting strikes are subject to execution in suits for damages committed by such unions. However, not all labor organizations are that large or have sufficient funds so that even a successful suit could not reimburse industry for the damage done to factories or other enterprises by sabotage. Repairs to such destruction are frequently very costly.

We have no law to prevent frivolous, unjust strikes, and I personally heard it frequently stated by officers of international unions that sometimes important decisions in controversies must be left to the local unions and that the members of these locals are beyond the control of the international headquarters.

If this law is intended to give labor organizations such a far-reaching authority, it certainly should provide also for full responsibility of the individual labor organization. Our existing laws provide that individuals, corporations, and trade associations, through their members, can be sued for damages and prosecuted for violations of the law, but as I understand the situation, it would be futile to attempt to sue either one of the international associations or unions and certainly much more so, small local unions. So far, the employer is the only responsible party.

As the bill stands now, it will, in our opinion, encourage disputes and strikes, unrest, and disrupt the progress industry has made in reemployment and the improvement of our economic situation. Apparent stability labor relations have reached under our code, will certainly be disturbed, and additional demands, which most of the units in the industry cannot meet under existing economic conditions, will be made upon industry.

Since the courts have held lately that the production of commodities, regardless of the ultimate disposition, is intrastate and not interstate commerce, this bill when passed will force the industry to break up into State units, just sufficiently large to meet the demands within the individual States, and divest itself of any interstate status.

Business has been in a quandary over national legislation and policies in the past, but depending on the apparent desire of the administration "not to rock the boat" has recently taken some heart, and this reaction is noted in the upward swing. You cannot bludgeon violators who abuse labor by such bills as this, as it strikes not only at the culprit, but penalizes the upright, law-abiding companies; and I am convinced that the latter form the large majority in our industry at least. The passage of this measure will certainly retard recovery by the uncertainty of its effect on industry in general.

In connection with the foregoing statement, I desire to submit the following statistical data showing labor conditions in the petroleum industry in 1929 and May 1934, as reported to the National Industrial Recovery Board during the hearing on employment provisions in codes of fair competition, beginning on January 30, 1935, to wit:

1. Working hours as prescribed by the Petroleum Code.

Thirty-six per week for nonclerical employees in oil-field, pipe-line, and refining operations.

Forty per week for nonclerical employees in marketing operations other than service stations.

Forty per week for all clerical employees in all operations.

Forty-eight per week for all employees in retail service stations.

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2. Minimum hourly rates for unskilled labor in—

(*a*) Oil field, pipe line, and refining operations range from 45 cents in the South to 52 cents in North and Pacific coast.

(*b*) Marketing wholesale operations: 40 cents in the South and 47 cents in North and Pacific coast.

(In both group minimum full-time weekly earnings range from $16 in the South to $18.75 in the North and Pacific coast.)

(*c*) Retail marketing (filling stations): Minimum weekly wages range from $14 to $15 per week, according to the population.

(*d*) Bureau of Labor Statistics average weekly per capita earnings in oil field and refining operations from September 1, 1933, to November 1, 1934, $25.43 to $28.43.

3. Total employment as of May 1934.

In all branches of the petroleum industry, 1,197,000 persons; total monthly pay roll, $130,779,000.

4. Reduction of hours per week of all classes of workers as compared with 1929, 16.7 percent.

5. Increase in employment in May 1934, compared with May 1933 (before code), 39.5 percent—compared with May 1929 as 100 percent, 7.7 percent.

6. General average of "real wages" (equivalent purchasing wages) relative to 1929 as 100 percent, 107.2 percent.

7. Reemployment from May 1933 to May 1934, 217,200 persons.

8. Increase in pay rolls during same period at the rate of $230,000,000 per annum, or 17.3 percent, or 1.33 cents per gallon gasoline sold.

9. Percentage of labor cost of total refinery operating expenses of 44 refineries in the Middle West and Southwest:

First 3 months, 1933, 27 percent; first 3 months, 1934, 32 percent; total United States in 1930, 17.24 percent.

10. Net return shown by standard statistics for 18 major companies: 1929, 8.39 percent profit; 1930, 2.50 percent profit; 1931, 2.25 percent deficit; 1932, 0.30 percent profit; 1933, 0.78 percent profit; 1934 (6 months), 1.13 percent profit.

11. Wholesale commodity index for January 1935 (1926=100): All commodities, 78.8; petroleum products, 48.8.

Senator WAGNER. Have you completed your statement?

Mr. LEDERER. Yes, sir.

Senator WAGNER. I want to ask some questions. Are you a member of the code authority?

Mr. LEDERER. I am chairman of the labor subcommittee, devoting my entire time to this important problem, and I live here in Washington.

Senator WAGNER. Are you one of the code authority of this industry?

Mr. LEDERER. No; I am not one of the 21 members of the planning and coordination committee, but I am authorized to represent, as chairman of the labor subcommittee, the planning and coordination committee here at this hearing.

Senator WAGNER. I understood you to say that in the beginning you were connected with the code authority.

Mr. LEDERER. No; I am chairman of the labor subcommittee of the planning and coordination committee of the industry, which is the Code Authority of the Petroleum Industry.

Senator WAGNER. Are you connected with the administration of the code in any way, officially?

Mr. LEDERER. In the governmental administration?

Senator WAGNER. You have a code, have you not?

Mr. LEDERER. We have a code; and under this code two agencies were set up, one by the President in representing the industry, which is called the "Planning and Coordination Committee", to which I belong as chairman of the labor subcommittee; and the other is the

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Petroleum Administration Board under Mr. Fahey, and a separate labor-policy board consisting of Dr. Stocking and two others.

Senator WAGNER. Do you believe in labor organizations?

Mr. LEDERER. I believe in them if they are properly managed. I believe they are beneficial if they are properly managed.

Senator WAGNER. Your observations did not indicate that.

Mr. LEDERER. I do not want to create an erroneous impression. I was asked the question if I am for the bill or against the bill, and I am not here to express any more than my opinion. I believe labor legislation is necessary under existing conditions. The industry is just as much socially conscious, and entertains just as much feeling for the employees as the labor organizations. Our relations with labor organizations here in Washington, and while I am still active in the industry, have been satisfactory.

Senator WAGNER. I have asked you a simple question, as to whether you favor labor organizations; do you or do you not? Can you answer that?

Mr. LEDERER. I can answer it in saying labor organizations are good, but I consider labor organizations also what you call now the "company unions", which are not under the coercion or any possible influence of the management, but created by free will and managed by representatives of the employees selected by themselves without any coercion or intimidation. I, of course, consider them also labor organizations.

Senator WAGNER. What in this bill would prevent the creation of such labor organization? What provision in this proposed bill would prevent the creation of such an organization as you speak of, as being the free choice of the workers?

Mr. LEDERER. The provision in here which in our opinion more or less legalizes the closed shop.

Senator WAGNER. Let me ask you candidly, is that the provision of the law which you say would be destructive of the so-called "company union", and not dominated?

Mr. LEDERER. This provision, in our opinion, more or less legalizes the closed shop.

Senator WAGNER. Is that the provision of the law which you think is destructive of the company union plan?

Mr. LEDERER. I gave in my brief several points of objection.

Senator WAGNER. I listened patiently to what I regard as clear misinterpretation on your part. That is a matter of opinion between you and I, and I will not ask you any questions if you do not want me to.

Mr. LEDERER. Yes; I would be glad for you to ask the questions.

Senator WAGNER. I am asking a very simple question, it seems to me, what provision of the bill is destructive of these unions you just spoke of that you favored.

Mr. LEDERER. I feel especially that the part of the bill which covers the closed shop is dangerous.

Senator WAGNER. Can I have this answer from you, that it is the provision of the closed shop which is in this act that you say you oppose as being destructive of these company unions?

Mr. LEDERER. Yes.

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Senator WAGNER. The bill as it reads now simply permits the closed-shop agreement to be made where they are made now. What State are you from?

Mr. LEDERER. Texas.

Senator WAGNER. Are closed-shop agreements legal in Texas?

Mr. LEDERER. I am not a lawyer, I could not answer.

Senator WAGNER. I might say to you they are legal in most States, or in many States. This closed-shop provision in the bill is all a matter of agreement, and no employer needs to enter into a closed-shop agreement unless he wishes to.

Mr. LEDERER. No; but it is the desire of the labor organizations to force the employer into it.

Senator WAGNER. We have many States now which recognize a closed-shop agreement as a legal institution.

Mr. LEDERER. The industry opposes a closed-shop agreement.

Senator WAGNER. In what way does this proposed legislation change the status of things at the present time? Are there not a number of closed-shop agreements outstanding today, which are made as the result of agreement between the employer and employee?

Mr. LEDERER. I do not believe they exist in our industry.

Senator WAGNER. If they do not, there is nothing here to force them upon industry, because it provides that not only must the employer, those you represent here, agree to it, but a majority of the workers must agree to it before it becomes legal.

Mr. LEDERER. Senator Wagner, from my own experience in the field, where I have always been very close to labor, having been one of them and worked my way up—for 31 years I have been in the oil industry, I know it is not what the word of the law is, it is not the intent, which is absolutely sincere we have no doubt, but it is the consequences of misinterpretations which are already under the National Recovery Act and our code, are being placed on the law, and which, certainly to a large degree will be read into this law, if it is passed.

Senator WAGNER. I just stated a moment ago that the closed-shop agreement, under this bill, must be consented to and agreed to by the employer before it can become legal, which is the law today in most of our States where closed-shop agreements are recognized. It is a matter of agreement and cannot be forced upon anybody.

Mr. LEDERER. You remember, sir, the decision made by our own labor policy board, for instance, in the *Magnolia case*, where the union insisted upon an agreement. You can also take into consideration the *Shell case* in California just recently, which had been operated like the Magnolia, under a company council, and recently an election was held at the Shell Co., and by changing the method in which the votes were counted certain branches of the industry showed a majority of their employees wanted the council to continue, where others wanted union representation, but by taking the vote, by the decision of the labor policy board, over the entire State, and not by branches, I believe that a majority of 51.6 percent were found to vote for the union to make an agreement with the company as to working conditions, and forced those employees, in spite of the fact they were in the majority in the production department, for instance, or in the designing department, or any other department, to submit to having the union representation.

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Senator WAGNER. I do not know what that has to do with the question. I do not want to question you at any great lenth, if you mean what you say that your whole position in this long statement you read is based upon the closed-shop provision in this act.

Mr. LEDERER. Yes; and all of the power which the new Labor Relations Board will have. I covered many points in my statement, not only the closed shop.

Senator WAGNER. What other particular provision is there in the bill to object to?

Mr. LEDERER. We object to the power which this bill, in our opinion, without consulting any attorney, gives to the Labor Relations Board. This Labor Relations Board can create agencies and other boards, and they can hear evidence, not legal evidence as we understand it which is heard in court, but they can present evidence which is based on rumors, hearsay, exaggeration, and then amend a complaint and render judgment, thereby, in our opinion, giving that Board the authority of a court.

Senator WAGNER. That is the other objection?

Mr. LEDERER. Yes.

Senator WAGNER. I might tell you that the Interstate Commerce Commission Act has a provision like that, the Federal Trade Commission Act has a provision of that kind, the Communications Commission Act has a provision of that kind, that the Board is not bound by legal rules of evidence, and I think every public-utility commission act of any State in the country has a similar provision, so as not to strictly bind the board in ascertaining the facts.

Would the fact that has been accepted as a universal rule in the establishment of these quasi judicial bodies change your mind about that?

Mr. LEDERER. No, Senator, it would not. We do not want to be a public utility.

Senator WAGNER. Every act where we created a quasi-judicial body like this, has a similar provision. For instance, the Federal Trade Commission has such a provision, and you know something about that.

Mr. LEDERER. Yes.

The CHAIRMAN. Are they bound by the rules of evidence?

Mr. LEDERER. I would not dare to argue with you about that, Senator.

Senator WAGNER. I am telling you we followed in that regard what has been the universally accepted rule in the establishment of these boards. Would you favor the bill if it limited the board to the taking of legal evidence?

Mr. LEDERER. I would favor labor legislation which will clear up and strictly define the relations of employer and employee, which is fair and just to both parties.

Senator WAGNER. Perhaps we can get at it in this way. You said you favor section 7 (a), and included it in your code?

Mr. LEDERER. Yes, sir.

Senator WAGNER. What is there in 7 (a) that is not in here, or what is there in here which is not in 7 (a), except we provide for enforcement. It may be some would like to have section 7 (a) set forth, but without any attempt to enforce those provisions?

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Mr. LEDERER. There is no use making a law without providing for enforcing it, and that is one of the greatest disadvantages as to the Petroleum Code, it has permitted certain members of the industry—not speaking about labor, but in general—to go on and violate the code and profit by it, while the conscientious law-abiding companies have suffered.

Senator WAGNER. I agree with you, that has been one of the difficulties.

Mr. LEDERER. That is correct. I am sorry I am taking up so much of your time with my statement.

Senator WAGNER. No; I am being enlightened. I do want to ask you a few questions, unless I should annoy you, and then I will stop.

Mr. LEDERER. No, not at all. I cannot argue with you about legal questions, but practical questions I can.

Senator WAGNER. Under 7 (a) workers should have a right freely and without interference from the employer, to choose their representatives whoever they may be, you believe in that?

Mr. LEDERER. Yes. I just want to say what we resent is interference by outsiders. We do not hesitate at all, and in fact actually have practiced for many years collective bargaining, even if it was not called that way, through committees and plant representatives.

The employee in our industry is well trained and intelligent men, and can take care of themselves, and in fact we want them to appoint intelligent men to represent them, so that we can sit with them across the table and put our financial statement on the table and say, "Boys, here is the result, if you do not believe our auditors, hire your own, and come in and check ours." All of these statements of large earning are confined to 16 or 18 of the so-called "major companies", the smaller one in the balance of the industry, which I tried to picture here to you this morning, as shown during a recent survey which Secretary Ickes had made, a loss of $140,000,000 to $180,000,000 in 1934.

I personally have intervened as the chairman of the labor subcommittee in many cases of complaints, and I am here to tell you I found our employees reasonable, and I have been able to make adjustments and give them back pay, where it was justified.

Senator WAGNER. I do not criticize that at all; in fact, I compliment you for having that relationship; and this bill is not intended to disturb that relationship at all.

Mr. LEDERER. But we are afraid it will disturb it.

Senator WAGNER. How will it do that?

Mr. LEDERER. By outsiders coming in.

Senator WAGNER. That cannot happen unless you give to the workers their free choice, and unless they have an election in which the employer does not dominate it at all but is the free choice of the worker, as to whether they select somebody from the outside or somebody from the inside. Isn't that what is provided in here?

Mr. LEDERER. Yes; but we prefer to deal with our own men who know the business.

Senator WAGNER. I am beginning now to understand your position. You are afraid that if you have an independent election the workers may select somebody from the outside to deal in their behalf rather than one of your employees?

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Mr. LEDERER. No; we are not afraid of that, because we know that in most cases where the employees are left alone they will select their own men.

Senator WAGNER. Then there is not a thing in this bill to interfere with that; but, on the contrary, it protects you, because if there is a dispute as to who shall select the representatives, you have an election under governmental supervision, free from electioneering or anything of that kind, where a man walks into the booth and selects his own representative. That is what I call the tenets of democracy.

Mr. LEDERER. Yes; and expression of principle.

Senator WAGNER. I know this is not true in your case, but it is a ground of opposition of many that they want to confine the bargaining agency to somebody in the plant; and you recognize the fact that, in some cases at least, where the man is an employee who is dealing in behalf of the other employees there is that economic advantage the employer has, that if he does not like the individual he can say you are finished, your job is gone.

Mr. LEDERER. There is the Executive order by the President which prevents absolutely discrimination against any employee because he makes a complaint or is a witness, or directly or indirectly acts upon his fellow workers.

Senator WAGNER. Outside of the closed-shop agreement you spoke of, I have not as yet found out what there is in this bill which will destroy this company union, which you prefer.

Is that the provision you are apprehensive about, or is it something else in the bill?

The CHAIRMAN. As I interpret your objections, you have the impression that it seeks to regulate your relationship with your employees as the Government regulates the public utilities?

Mr. LEDERER. Yes, sir; that is correct.

The CHAIRMAN. And you do not want to be treated as a public utility?

Mr. LEDERER. That is correct; and if I may make one more statement, we feel our industry, being split up, scattered about and decentralized all over the country in so many large, small, and different sized enterprises, cannot be regulated and thrown into the hopper with other industries.

Senator WAGNER. Supposing, under the provisions of your code—I do not mean you individually—but suppose some one of the employers would deny the workers the right to an election to choose representatives, as you and I agree they are permitted to do under section 7 (a), what remedy have the workers?

Mr. LEDERER. That has happened, they appeal immediately to the labor policy board of the Department of the Interior, and they send a representative or agent down there to conduct the election, and in 10 days in case it was an adverse judgment the employer not agreeing with the stipulations of the code, then the case was turned over to the Department of Investigation, the Department of Justice.

Senator WAGNER. Supposing the employer refuses to hold an election or would not permit an election to be held, what would happen?

Mr. LEDERER. The Secretary of the Interior, the oil administrator, can turn the employer over to the Department of Justice for prosecu-

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tion, and the nearest Federal district attorney takes him into court for violating section 7, article II of our code.

Senator WAGNER. In this case the Labor Board would hear the complaint, and the Labor Board would order the election to be held. That is the only difference.

Mr. LEDERER. If we understand the set-up of the Labor Board in this bill, it can be very unfriendly and a disturbing element in the industry.

Senator WAGNER. Is that what you are afraid of, it may be unfriendly?

Mr. LEDERER. Furthermore, we feel if we have to deal with representatives of our employees through local unions or international unions, we want them to be on the same level with us as far as the law is concerned.

Senator WAGNER. Of course, there was a case in which the steel board ordered an election to be held, and it has been in court for 7 or 8 months, and that is what happens when you go into the courts for review.

Mr. LEDERER. That is a matter for the wisdom of our Senators and Representatives, when there is a weakness in the law they can change it.

Senator WAGNER. That is what I am trying to do, I see that weakness.

The CHAIRMAN. Is there anything further, Mr. Lederer?

Mr. LEDERER. No, Mr. Chairman; I have nothing further to say.

The CHAIRMAN. Is Mr. Donald Comer present; please come forward, Mr. Comer?

STATEMENT OF DONALD COMER, OF BIRMINGHAM, ALA., REPRESENTING THE COTTON TEXTILE INSTITUTE

The CHAIRMAN. Your full name is Donald Comer?

Mr. COMER. Yes, sir.

The CHAIRMAN. And you reside where?

Mr. COMER. Birmingham, Ala.

The CHAIRMAN. What is your business?

Mr. COMER. Cotton manufacturer.

The CHAIRMAN. Where is your plant, in Alabama?

Mr. COMER. Yes, sir.

The Chairman. You are here representing the Cotton Textile Institute?

Mr. COMER. Yes, sir.

The CHAIRMAN. How many manufacturers are there in that institute?

Mr. COMER. About 1,200.

The CHAIRMAN. Does it include the manufacturers from all sections of the country?

Mr. COMER. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. COMER. I am not here to oppose the purposes of the Wagner bill. As an employer, I am anxious for every assistance toward a harmonious and successful operation of the business with which I am connected. I am just as anxious—just as eager as anyone to find a better means and method for accomplishing this result. As long,

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however, as we are dealing with plans made by human being, certainly there can be differing of opinions as to the best ways of doing things. I am sure that those who are proposing this particular plan are willing to ascribe to its opponents motives just as free from self-interest as their own.

One of the strongest arguments for delay in such legislation is the facts that there is an assumption of inimical interests between all employers and employees, and that all such relations must be regimented, right now, by law.

The Congress has constantly complained against lobbying by organized minorities, and it is the support of an organized minority today that is giving the strongest backing to this bill. If there could be the free choice that is proposed in it—if the employees of this country could have freedom of expression and protection from every outside selfish influence—then there might be justification for an attempt to hurry legislation in a matter like this, but records of the past clearly prove that this is utterly impossible. We all know that organized minorities have been most vocal in Washington, while the unorganized majorities, as a rule, have no special pleaders. There is a long road of education, of trial, and error ahead of the great army of people who work in this country. There are no doubt many of them who feel that there should be more ways than one available for arriving at a fair and satisfactory working relationship.

Senator WAGNER. You do not expect me to advocate it be made Republican, do you?

Mr. COMER. Maybe we can have some other party.

Senator MURPHY. Of course, you mean nationally; you do not mean just the State?

Mr. COMER. Yes, sir. Senator Black, I am not asking you to agree to this.

Senator BLACK. I don't think you want the Republican Party to run the United States, do you?

Mr. COMER. No, sir; I do not. I think the present administration, the present Democratic Party, has given to the South the first and only opportunity of economic freedom we have had since the Civil War in its program of giving us parity prices for our cotton.

President Roosevelt, on May 7, 1933, in speaking of our industry, the cotton-textile industry, said he felt sure that 90 percent of our employers were anxious to conduct their businesses honorably and fairly. One of the values which he mentioned at that time that would come from majority control was "to prevent an overproduction that would result in unsalable surpluses."

We feel that the Cotton Textile Code in establishing its four rules, provided adequate protection for this majority and adequate prevention against exploitation by the minority. These four rules established a minimum age, a minimum wage, a maximum week hour, and provision against uncontrolled production. General Johnson said that in these rules N. R. A. accomplished more than organized labor had done during its entire existence.

There is no one in this country happier over these gains than the textile industrial leaders, and they want them protected by the continuation of N. R. A. I am speaking about my own industry, be-

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cause it is the one I know most about, and I speak of our code because I am a member of the code authority.

Maj. George Berry, president of the International Pressman's Union and division administrator of the N. R. A., and one of the ablest labor leaders in this country, in July 1934, at the Blue Ridge Industrial Conference, said:

> I have repeatedly paid my compliments to the courage, vision, and patriotism—the sort of patriotism I love to think about—of the men and women of the cotton-textile industry who were willing to meet this issue as the first ball to be pitched. These cotton-textile people walked up and said, "Try it on us." I have said to these gentlemen, "You have courage. It is inevitable that you will suffer in consequence, because until all these other industries will have established some minimum in their business you will not be able to come out." They said they realized that, and they took it.

Every condition of operation—every relationship between employer and employee cannot be covered either by code procedure or by legislation. Codes cannot and were not intended to regulate all trade, wage, and operating conditions. The Textile Code was intended to do just exactly what it has done—limit hours, ages, and wages, and to allow freedom from coercion in collective bargaining, and leave the adjustment of some things to local conditions and competition. In the playing of the game, after we have established some fundamental rules, opportunity must be given for competition and freedom of initiative. Crowding for advantage may be making haste slowly. Long ago Aesop told this story in the fable of the dog who dropped the piece of meat that he had in his mouth in anticipation of the larger-looking piece shadowed in the water.

I'd like to review the changes in our industry just in modern times. David Livingstone at 10 years of age worked in a British textile mill from 6 a. m. to 8 p. m. Henry M. Leland, in later life known for years as "Detroit's first citizen", in telling how he became a child laborer, said:

> After my father's health had broken, our family moved from Vermont to Massachusetts. My mother worked out a fair subsistence for her large family by keeping boarders and by the help of the older children in the mill—but the meager income from the long hours in the mill, 12½ hours daily, would hardly keep body and soul together.

William Gregg, when he built the Graniteville Mills in South Carolina, ran these mills as much as 14 hours a day, at 10 cents to 50 cents a day—6 days a week—and Dr. Broadus Mitchell, who wrote the story, says that the employees found that better than tenant farming.

In March 1933 cotton mills in New England States were operating 48 to 54 hours a week, and in Southern States 55 to 60 hours a week, and some adult wages were as low as $5 and $6 a week.

These are conditions that we moved away from over night and I think I am safe in saying that notwithstanding this tremendous comparative improvement that came by code agreement in July 1933 that there has been more dissatisfaction because of the lure of still greater advantages attractively presented in the shape of proposed legislation, or broadcast by some recklessly eager, irresponsible, and self-appointed leader.

This bill today seems to carry with it more suggestion of continued conflict than of harmony. We seem to be thinking more of the right to strike than of the right to work. The accent is more upon rights

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than upon obligations and responsibilities. We seem to be thinking more of the right of forcing some employees upon employers than of working toward a condition where employers are anxious to employ, and where both groups would be free from coercion.

Our industry gladly joined the "new deal"—and furnished 140,000 new jobs and increased its pay roll from $12,000,000 a month to over $26,000,000 a month. In many instances it more than doubled the hourly wage rate, and because of that, as prophesied by Major Berry, we found the product of our looms out of price parity with the other things that can take the place of cotton.

The CHAIRMAN. What has been the average increase in the price of different varieties of cotton cloth since the N. R. A.?

Mr. COMER. The stable cloths have more than doubled.

The CHAIRMAN. They have increased as much as 100 percent?

Mr. COMER. Yes, sir. Because of this, with other factors, of course, entering in, our export business of 550 million yards a year has declined to 200 million yards, and is continuing to shrink. We have lost 20 percent of our domestic market to such substituting fibers as rayon, jute, seisal, and paper and to increasing imports from Japan.

Senator WAGNER. Was that manufactured with our cotton?

Mr. COMER. It may be so, because Japan takes about 40 percent of our cotton against 60 percent of India cotton; but this year, their requirements will be 25 percent American cotton and 75 percent foreign cotton. So it is a fair chance Japan is shipping into this country goods made of India cotton.

Senator BLACK. What percentage is that imported from Japan of the total consumption of the country?

Mr. COMER. Japan consumes, so far as our records show, about 3 million bales?

The CHAIRMAN. No, Mr. Comer, what percentage of the cotton cloth imported is that of the total consumption?

Mr. COMER. I mentioned these figures as an indication of the trend, but not so much as they might affect the industry.

Senator BLACK. I wondered if you had the percentages.

Mr. COMER. No; I have not.

Senator MURPHY. I would say, Mr. Chairman, it was testified before the agricultural committee that our exports of cotton to England were declining, particularly in the last years, and the raw cotton that used to go to England most of it now goes to Japan, and that Japan was taking from England the production of textile goods.

Mr. COMER. Japan has taken all of our export business to the Philippine Islands which we had previous to the N. R. A., and that is about 150,000,000 yards of cloth.

The CHAIRMAN. And also a good deal of our export business to South America.

Mr. COMER. Yes, sir.

Senator MURPHY. You say Japan is taking England's export trade, largely?

Mr. COMER. Yes; to India and Africa.

The CHAIRMAN. Have you finished with your discussion of that question of imports from Japan to this country, Mr. Comer?

Mr. COMER. Yes, sir.

The CHAIRMAN. May I ask two questions?

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Mr. COMER. Certainly.

The CHAIRMAN. Is there not a provision in the National Recovery Act which permits the Administrator to limit the imports into this country, and even to place an embargo on imports if the industry can show that those imports are interfering with the proper operation of the code set up under the N. I. R. A.?

Mr. COMER. Yes; the N. I. R. A. provides machinery for doing that very thing, but it is so slow.

The CHAIRMAN. Has your industry made any effort on that line?

Mr. COMER. Yes; we have, but we succeeded in doing only one thing, and that is stopping the importation of rugs from Japan. We stopped those at the instance of a manufacturer of rugs in New England and Mr. Calloway's bill in Georgia.

The CHAIRMAN. That requires action by the President.

Mr. COMER. I think it does.

The CHAIRMAN. Of course, with a recommendation from the National Industrial Administrator.

Mr. COMER. Yes, sir.

The CHAIRMAN. Some of the industrialists in my State have been urging legislative action, and I have pointed out to them that there is an administrative action that can be had, and we have transferred our legislative powers in that respect to administrative officers of the Government.

Mr. COMER. I would like to say in that respect the Philippine Legislature was agreeable to raising its barrier high enough to prevent this substitution of Japanese cotton goods for our goods, but for some reason it was stopped by our Government, so our people are told.

The CHAIRMAN. Yes; I understood that assertion has been made, that there was some interference by a department of the Government that wanted suspension until such time as certain international trade agreement had been entered into.

Mr. COMER. That is correct; but in the meantime we continue to take the Philippine sugar, coconut oil, and rope.

As an illustration of what this means, in January 1934, 30,378 square yards of cotton cloth were imported from Japan. In January and February 1935 they sent 10,289,000 square yards, a gain of over 15,000 percent. To cap the climax, our industry was subjected to an uncalled-for and unwarranted general strike attempt, which brought forth the following statement from General Johnson:

> The present strike is an absolute violation of our understanding, and I must say with all the solemnity that should characterize such an announcement that if such agreements of organized labor are worth no more than this one, then that institution is not such a responsible instrumentality as can make contracts on which this country can rely.

Because of this loss in our natural markets, both at home and abroad, and because of consumer resistance to the "out of parity prices" of cotton goods, and because of increasing imports, our industry today finds itself harassed within and without. Under these conditions is it to be wondered at that investigation by the Federal Trade Commission finds our business operating at a loss? How much happier I would be today if I were here testifying in support of a bill that had for its purpose a plan for finding farm benefits other than from a processing tax.

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Senator MURPHY. Would you repeat what you said about the processing tax, please?

Mr. COMER. How much happier I would be today if I were here testifying in support of a bill that had for its purpose a plan for finding farm benefits other than from a processing tax.

I am delighted to have the farm benefits for our southern farmers, but I think of all the people we are seeking to give relief to out of the Public Treasury, and all of the people who need it most, it is our tenant farmers in the South; but find the money for them only by taxing that which they raise, seems to me to be so much out of line of the way and the place to get the money.

Senator MURPHY. What alternative plan would you suggest?

Mr. COMER. I understand your present Public Works bill for $4,000,000,000 carries with it a Senate amendment providing money can be used from that even for farming benefits.

Senator MURPHY. You would use that?

Mr. COMER. I would use that in preference to a processing tax, and I would use money from any other public source than a processing tax on cotton itself.

Senator MURPHY. Of course, you know that processing tax is to give the producer the benefit of the tariff?

Mr. COMER. Yes, sir.

Senator MURPHY. Your preference to the processing tax is taking something in the way of an appropriation by the Federal Government. Do you approve of Senator George's proposal that we give the producer the parity price, and as to what we sell abroad under the parity price, we make up out of the Federal Treasury?

Mr. COMER. I would not go that far. I think we should give the farmer the parity price for the cotton consumed in this country, then for cotton he raises for export, I think that ought to be sold possibly at the world price.

Senator MURPHY. How would you take care of the difference between that and parity?

Mr. COMER. That is the farmer's own program. If the world price was not satisfactory, he would not raise cotton other than for home consumption?

The CHAIRMAN. How much of the 100-percent increase in the cost of cotton cloth since the N. R. A. and the A. A. A. can be attributed to the processing tax, and how much to increase in wages, if you can tell that?

Mr. COMER. There has been quite a dispute between processors and the Agricultural Department on that question. They have gone so far as to say to the consumers of this country, "Take a pair of cotton overalls and weigh it, and if it weighs 1 pound, there is only 4⅕ cents process tax in that process." I think that is exactly wrong. I think the processing tax of 4⅕ cents per pound when I open it at my mill must pyramid through my selling agencies, through the manufacturer, the wholesaler, and through the retailer, and when it finally reached the consumer that 4⅕ cents a pound I think is likely to be a great deal more.

By law I am compelled not to tell you how much that should be; they will put me in jail, they say, but I am sure that like every other craft going into manufacture and distribution, it pyramids through all of these sources of distribution.

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The CHAIRMAN. In general it is a substantial increase.

Mr. COMER. As much as 20 percent some cost accountants have figured. Another thing about the processing tax is it deals with pounds instead of percent; therefore the man who is least able to pay it, who has to buy a heavy pair of overalls or a heavy shirt, is the one who pays it instead of the man who buys a white shirt, or a handkerchief, and I think if we are going to collect a processing tax, it should be a sales tax at the point of consumption rather than at the beginning.

The CHAIRMAN. How much of that percentage of increase is attributable to increased cost of labor, if you can state?

Mr. COMER. Labor costs have doubled in my mills.

The CHAIRMAN. Do you mind telling the committee what your own processing tax amounts to in a month or a year?

Mr. COMER. Our own company spins about 125,000 bales of cotton, and we pay $21 a bale processing tax, so that our company pays something over one-fiftieth of all the processing taxes paid.

The CHAIRMAN. How much does that amount to?

Mr. COMER. Over $2,000,000 a year.

The CHAIRMAN. How much is your gross business?

Mr. COMER. The gross business at the present prices is about $20,000,000.

The CHAIRMAN. So that you have to pay about 10 percent of your gross business in processing taxes?

Senator MURPHY. Have your earnings been more or less?

Mr. COMER. They have been less. We have quit speaking about earnings.

Senator MURPHY. Take the period since the processing tax, has it been better or worse?

Mr. COMER. It has been worse.

Senator MURPHY. What is the condition of the producer of cotton?

Mr. COMER. Better, but the story is, what has made it better? He has been getting 12 and 12½ cents a pound for his cotton, and the Government has bought the surplus and now owns it.

Senator MURPHY. Have you measured the producers' benefit in terms of percentage?

Mr. COMER. He has been given a hundred million dollars benefit, I presume. That is what has been collected, and I presume it has been given to him.

The CHAIRMAN. That does not mean cotton alone?

Mr. COMER. Yes; cotton alone. They have collected something over $100,000,000 on processing taxes for cotton alone, and that is presumed to have gone to the cotton farmer.

Senator MURPHY. Besides that benefit, he got the benefit of the higher price.

Mr. COMER. Yes, sir.

Senator MURPHY. So that the program has succeeded in giving the producer a higher price.

Mr. COMER. Yes, sir. I do not think the processing tax has been the reason for the higher price. I think the higher price came because the Government pegged it at 12 cents.

Senator MURPHY. And with that the allocated 20 percent of increase in the cost of cotton goods due to the processing tax?

Mr. COMER. That is right.

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Senator MURPHY. Of course, the Government at that price puts a plank under the market, and is holding today approximately how many million bales of cotton?

Mr. COMER. About 6,000,000 bales.

Senator MURPHY. And it will continue to hold them until it finds a market for them.

Mr. COMER. Yes, sir.

Senator MURPHY. For the purpose of developing information for the committee, and for myself, it should prove interesting, I have heard it said that the textile strike was a blessing in disguise for your industry, because it effected a decrease in production more rapidly by permitting practice of what was on the market. I noticed in yesterday's New York Times that there is a code limitation agreed on to have some 25-percent reduction in production.

Mr. COMER. That is right.

Senator MURPHY. Is the condition of the textile industry attributable to overproduction?

Mr. COMER. May I tell you first, a little story?

Senator MURPHY. Surely.

Mr. COMER. I am chairman of the rural rehabilitation program of Alabama, and in my State we had to do last year with some 25,000 farm families out in the country, and we selected out of a that number 6,000 we thought had the possibilty of making an independent farm and home, and to prove they were in earnest about their own condition we said, will you take a steer, and go over and take 10 acres of land and make a living. Six thousand of them took the steers and went on the 10 acres. As chairman of the committee it was my duty to visit some of these people, and I did, and I found that the chief concern of these families was where they could get enough cotton cloth, a few yards of cotton cloth so that the little girls or boys could be decently clothed to go to school.

I am going to quote Miss Perkins, she said the South was a good market for shoes, you remember. She told me it was a good market for everything, and the South has a potential buying power so far beyond the rest of this country, if we could only rehabilitate this rural population in our section, what we could do toward buying things this country is piling up in the warehouses, is tremendous.

Think of a woman wanting 3 yards of cloth for a dress for her little girl and could not get it.

Senator MURPHY. Of course, the problem is to create that purchasing power. Let me say in that connection, that the development of the A. A. A. program all through the grain belt, gave us an increase in price for grain, corn, oats, hay, and everything else, and this resulted in increased purchasing power, of your cotton cloth among other things, and to the prosperity of your section.

Now, the farm manufacturing industry had nothing in inventory at all and they are going out and have been going out since last fall, supplying farm machinery tractors and things of that sort.

A shoe manufacturer at home said to me that he had orders ahead for 2 months to keep him at capacity.

In your opinion are we producing purchasing power by inducing a rise in the price of these commodities? Is that principle basically sound?

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The CHAIRMAN. It has not worked out that way in the cotton-textile industry?

Mr. COMER. Mr. Hopkins asked me a question like that, and I told him I thought our code should deal with four things only, and that was, ages, wages—that is minimum wages and maximum hours—and some machine-hour control for a while. I dislike the idea of controlling production but as a temporary thing it may do.

Senator MURPHY. That is as far as I want to go with it.

Mr. COMER. I think you have got to have some rules of the game, and there has got to be something left in order that the man with the most initiative, and the man who can produce most economically can get some measure of reward.

Speaking about the South again, and comparing Iowa with Alabama, the tools of Alabama farms is $130 by the 1930 census, and $1,200 in Iowa; the Alabama farm home is $400 and the Iowa farm home is $2,400; the Alabama farm income is $300, and Iowa is $1,800, and those ratios are the same between the two States as to education, automobile ownership, as to income tax, and is about the same as to preachers, teachers' salaries to a large extent.

Senator MURPHY. For the time being you are for the A. A. A.?

Mr. COMER. Yes; and let me say this, I do not want the A. A. A. to license me without my consent.

The CHAIRMAN. I assume you are for it, if at all, on the previous statement you made distinguishing between paying a processing tax on cotton for domestic purposes and for exportation. Did you not make a distinction?

Mr. COMER. I did not think the benefit of producing a parity price for cotton for domestic consumption should be had from any process tax if it could be had anywhere else.

Senator WAGNER. In talking to one of our foreign investors not so long ago he gave it as his view that one of the reasons why the market for cotton in foreign countries is greater, is because those countries have been unable to sell commodities to us; we have not given them the wherewith to buy our cotton, and that is one of the reasons for this shrinkage.

Mr. COMER. The Secretary of Agriculture says that, but I have said to those gentlemen, when you say something must come into this country in order that more cotton shall go out, please tell us what it is you want to bring into this country.

Senator WAGNER. That is a difficult question.

Mr. COMER. Yes. I think cotton has lost its market in the world because we pegged it at 12 cents, and the world knew all they had to do was to sell it at $11.95.

The CHAIRMAN. The Secretary of Agriculture made a radio talk last week very strongly urging the increase of imports in order to increase our exports.

Mr. COMER. Yes; I remember that.

The CHAIRMAN. We will now recess until 2:30 o'clock.

(Whereupon, at 1:15 p. m., the hearing was recessed until 2:30 p. m., of the same day.)

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AFTER RECESS

The committee reconvened at 2:30 p. m., pursuant to the taking of the recess.

Present: Senators Walsh (chairman), Black, and Murray.

Also present: Senator Wagner.

Senator MURRAY. You can resume the stand, Mr. Comer.

STATEMENT OF DONALD COMER—Resumed

Mr. COMER. Senator, may I just before returning to my manuscript and in order to make the record a little clearer on one of the matters we discussed this morning say a few things right here in that respect?

Senator MURRAY. Certainly.

Mr. COMER. We discussed the processing tax this morning. My idea was that the processing tax coming one month after the increased cost incident to N. R. A., followed by the advance of raw cotton from 6 cents up until 12 cents, that all three of those things entering into the cost of cotton goods put cotton goods out of parity with things that ordinarily substitute for cotton.

Senator MURRAY. Yes.

Mr. COMER. Now, we can say that the processing tax was the last straw that broke the camel's back, or we can say it was the N. R. A. cost, or we can say it was the advance of cotton itself. All I know is today the industry is in the most distressed condition that I have ever known and I, and my family before me, have all been cotton spinners as well as cotton farmers.

As to where we shall find the money to take the place of a processing tax on cotton to pay farm benefits, Senator George has an amendment attached to the present Public Works Bill, permitting money from that particular fund to be used for that purpose. I think, as I said this morning, that the money can be found from anywhere to better advantage than from the tax on the cotton itself. But if cotton is to be taxed in order to pay this farm benefit, then I was trying to say that the $21 a bale, collected at the point of mill opening of the bale, might conceivably become $42 a bale before the consumer bought the goods. So that in order to get the $120,000,000 benefits needed for the cotton program, for the farm-benefit program, rather, the consumer may conceivably be paying twice that much for the cotton goods. And that is certainly burdening the flow of cotton goods, and it is certainly disturbing the best customer of the cotton farmer, who is the cotton spinner. Therefore, it would be so much better to collect the $120,000,000 needed by percent of the value of cotton goods at the point of consumption rather than the $120,000,000 at the beginning with the pyramiding in between. That was the point that I was trying to make.

Then I was trying to make this point also, that in a processing tax dealing with food products like wheat and meat and corn, that if the consumer is driven away from those particular products he still has to eat. He may go to rice or potatoes, or he may go to goats instead of hog meat, but he is still buying what the farmer raises. But on a processing tax on cotton, if the consumer resists he turns to rayon, or to jute, or to seisal, or to paper.

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Now the processing-tax law provided those things that take the place of cotton goods shall be immediately burdened to compensate for the processing tax on cotton, but they have not carried out that provision of A. A. A. They put some compensating tax on jute and paper, but not enough.

They started out to put it on rayon, and the rayon people were willing to pay it. But they looked around and said, "It is true we do compete with mercerized cotton goods, but we also compete with silk goods. And if you are going to burden rayon goods to compensate for the processing tax on cotton then you must burden silk to compensate for the processing tax on rayon. And so away the program went, broadening out and becoming just impossible, and today we have no compensating tax on either rayon or on seisal, although the farmers are plowing with seisal rope instead of cotton rope, and they are using rayon instead of cotton, and they are using paper bags, paper strings, jute bags, and jute strings instead of cotton, as the result of which we have lost 20 percent of our domestic business in cotton.

The question was asked today whether a strike did not come at a time when the mills were glad to shut down. The mills were glad to shut down. And they are right now going on a program of 25 percent curtailment. It is not because of the fact necessarily we have our overproduction. It is because we have lost some of these markets I have spoken about. And we are still hoping this administration will correct some of these injustices and that it will not continue to penalize the first industry which stepped up and said, "Burden us with these N. R. A. costs, burden us with the processing tax in order to pay farm benefits, but hurry and increase purchasing power somewhere else, to buy our higher-priced cotton goods." And today we have not yet done that. And so we are asking today again for a program of settlement in order that all mills may shut down, all machinery may shut down alike. Some of us have been shutting down, we are having to shut down, and we are going to continue to have to shut down, but it is not because of seasonal depression or slacking of the cotton goods business, it is because of the things I have just mentioned.

Senator MURRAY. That is a very clear explanation of it.

Senator WAGNER. I do not want to pursue that too far, because really it is not relevant, but when we have an authority I suppose everybody wants to take advantage of the occasion to get some information out of you. I was going to ask you do you believe in the so-called "debenture plan", and would you regard that as favorably as the processing tax plan?

Mr. COMER. The Secretary of Agriculture of the State of Texas, Mr. McDonald, has a program which I think ultimately will be the right plan, and that is to provide by benefit for a parity price for the cotton that is consumed in this country, and allow any other cotton that they want to grow under control of some sort to go at world prices.

I thought last year, Senator, and I have always thought, that when we curtail our cotton crop that we should have asked the rest of the cotton-producing countries to join with us. We did in sugar and we did in wheat, but we did not do it in cotton, and the result

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is we went through the embarrassment of providing at world's prices 23,000,000 bales of cotton, curtailing our own crop, and by the Government taking 6,000,000 bales of cotton off the market at 12 cents.

Senator WAGNER. Mr. Comer, is there not something to the proposition that we not accepting the goods of other countries, to whom we have sold cotton in the past, that they were compelled to curtail their purchase of cotton from us because they were not able to get any credit in this country?

Mr. COMER. Senator, the exports of most all other things, a great many other things, have increased; during the time cotton exports have decreased instead of exporting cotton and cotton goods our exports of cotton ginning machinery to Brazil alone in 1933 were $65,000 and increased in 1934 to $555,000.

Senator WAGNER. They are producing it in other countries producing cotton?

Mr. COMER. Yes, sir. They can do it and they are doing it. And if we try to make our parity prices for home consumption the world's price we will lose our cotton market for the world. We have got to divide our cotton into two groups, one for home consumption and one for foreign consumption.

Senator WAGNER. I did not understand that plan you just suggested. How is the cotton grower going to become compensated for the cotton he sells at the world price?

Mr. COMER. He will take the world price for it.

Senator WAGNER. How is that?

Mr. COMER. He will take the world price for it. He will compete with the world if he wants to.

Senator WAGNER. He can afford to do it?

Mr. COMER. He does not have to. He can do that if he wants to.

Another thing that happened in cotton growing last year was in the control of hogs and also the control of hog fat, which resulted in cottonseed last year bringing $50 a ton because there was cottonseed oil in it. And that amounted to $25 a bale. So if they keep on reducing the production of hog fat in this country the cotton farmer will have two things to sell, cotton and cottonseed too, which helps his situation.

Senator BLACK. Mr. Comer, as I gather it, what you favor is a bounty to the cotton farmer paid out of the Treasury for all cotton sold in the domestic market, leaving him free to sell his surplus cotton on the world market?

Mr. COMER. Either free or under some kind of pool arrangement. I really think it ought to be pooled in some sort of fashion, but to have it sold at world prices.

Senator BLACK. As is gather further, you are opposing the processing tax largely on the ground it is a sales tax on cotton products alone?

Mr. COMER. And the fact that they have not been able to burden those things which take the place of the cotton.

Senator BLACK. I said a sales tax on cotton alone.

Mr. COMER. Alone, yes.

Senator BLACK. And I also gather in one part of your objection that it was based on the fact that it was taxing commodities that the poor people chiefly buy.

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Mr. COMER. And at a pound price, which makes the higher tax on the heavy work shirt and the heavy overalls, and an infinitesimal tax on the woman who wears the artistic or the sheer dress.

Senator BLACK. That necessarily gets down to the general taxing problem, and I judge from that you would favor taxing those less able to pay?

Mr. COMER. I am.

Senator BLACK. And not by imposing a sales tax on the necessities of life.

Mr. COMER. I am, and my father was before me.

In fact he said when Governor of Alabama that you cannot get money except from the people who have it.

How much happier I would be today if I were here testifying in support of a bill that had for its purpose a plan for finding farm benefits other than from a processing tax, a plan for the protection of our home markets against the importations from Japan, a plan for regaining our lost Philippine market, a plan for establishing a parity as between cotton and those things which can and do substitute for cotton. I would like to join with the supporters of this bill in helping Senator Bankhead with his program for giving tenant farmers a fair chance of becoming home owning and farm owning. And if we could just lift the purchasing power of the Southern farmer to an equality with that of the Ohio farmer, some of these things we are worrying about today would not be troubling us.

I believe if and when a majority of the industrial workers wish or need the purported benefits of this bill they will be quite able to get them without this or similar legislation.

N. R. A. and our code have already provided definite and marked benefits for our industry and before endangering these gains by crowding further right now, if all industry and the supporters of this bill would join together in one single and determined purpose of rural habilitation, particularly in the South, all of us would more surely and in a more orderly way get indirectly every desirable value claimed under this and similar bills.

With our ports closed to immigration, with the economic condition of our farmers lifted, the question of industrial relations wouldn't need all the outside attention that is being presented today.

There has been one question raised, I understand, during this hearing, that the majority of the employers have the right under their code and under N. R. A. to compel the minority to conform, that that has been one of the arguments used. Is that so, Senator Wagner?

Senator WAGNER. That was not quite it. The statement was made that the association, the American Association of Manufacturers as part of their platform adopted a majority rule so far as it affected industry. I happen to have it here. May I read it here?

Mr. COMER. Yes, sir; I would be glad to hear it.

Senator WAGNER [reading]:

> Under appropriate safeguards the approved competitive practices and prohibitions submitted by the properly defined majority group, trade, or industry should be binding upon a minority.

That is their platform, and it was adopted.

Mr. COMER. I would like to say first that I am not a member of the National Association of Manufacturers. I am a member of the

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American Cotton Manufacturers Association, and of course a contributing and supporting member of the Cotton Textile Institute, which supports the textile code authority. Here is what I would like to say about my organization. I cannot speak for other people; I can only speak for myself and for my organization, so far as I know.

Organizations of employers in our industry, in my experience of them, have been only for the purpose of what is good for every part of the business, good for both employers and employees. We join together for protecting our natural markets, for resisting unfair taxation, for demanding equitable freight rates, for seeking new uses for our products, and so forth. The only time we ever got together in 100-percent accord was in operation under our code and in every provision of our code first consideration was shown for the employee. He was protected in age, wage, and hours of labor. The owner was to wait for a subsequent sharing from indirect benefits. The control of industry by majority action under code procedure has to have the blessing of N. R. A. Refused the sanction for curtailment for the last 9 months, our industry has been forced into overproduction and operation at a loss. The minority interests have always been given the opportunity of a full hearing, as a result of which in many cases they have been given many exceptions for themselves, either individually or in groups. In the interests of the minority, N. R. A. has overruled more than once the wishes of the majority. Those who are attempting to legislate for our industry should read Lancashire Under the Hammer, a story of textiles in England.

In July 1933 the Avondale Mills, of which I am president, had 2.5 million pounds of manufactured cotton goods in our warehouses—a normal stock. Today we have over 12 million pounds. Included in this inventory value is 5 cents per pound processing tax, over $600,000, 13 cents for raw cotton as well as the cost incident to the shorter hours and higher wages. We have borrowed all the money we dare borrow. There is no market for these goods even at less than cost. We have not been able to pass them on to a consuming public, and this is making it very difficult for us to continue to maintain an operating schedule. There is tremendous concern for the unemployed of this Nation and in this we join, but we should have an equal concern for the safety of the jobs of those who continue to still find employment.

I have never faltered in my support and enthusiasm for the benefits that came to the people who work in our mills under our textile code. I desperately wanted shorter hours and higher wages. I worked constantly for them for years before they came.

Senator WAGNER. May I interrupt you there?

Mr. COMER. Yes, sir.

Senator WAGNER. I was going to say this, that if all employers were like you this legislation would not be here at all.

Mr. COMER. I thank you, sir, for the compliment, but, Senator, there are lots of them like me.

Senator WAGNER. I know there are.

Mr. COMER. Lots of them like me.

Senator WAGNER. I know. They are a majority I should say, but that does not solve the problem.

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Mr. COMER. I would like to say this, that I believe that as a cross-section of our society there are just as many people in my group trying to do the right thing as there is in any other group.

Senator WAGNER. Yes; it is the small minority that causes the damage, but that group has got to be dealt with.

Mr. COMER. I think that is why we got our code, that is why there was sufficient need of a code, and why our industry asked for it, and 95 percent of our industry wanted a code before 1933. We were trying back in 1930 and 1928, Senator Black, I think you can say, to get some of the benefits that have now come through other procedure.

Senator BLACK. I think you were in the minority, Mr. Comer, in trying to get shorter hour and much higher wages.

Mr. COMER. Senator, we had half the spinners of Alabama behind that request for a 48-hour week.

Senator BLACK. About half of them?

Mr. COMER. Yes, sir; about half the spinners of Alabama alone. I do not know how much over the rest of the country.

Senator BLACK. When you went to the meeting I think I saw a speech you made in the meeting of the Textile Association, or some association it seems to me, like up in North Carolina, where you advanced the idea of a national law probably for shorter hours. It did not get a very good reception, did it?

Mr. COMER. We were asked, a committee from Alabama, of which I was the chairman, to make a further investigation, not only dealing with the question then of shorter hours, which we proposed at that meeting, but also the question of a minimum wage.

Senator BLACK. Yes.

Mr. COMER. Before we got time to make a report or make the study we had a change in administration and had an opportunity to come through other procedure.

Senator BLACK. You were a pioneer so far as that section down there is concerned as to getting a regulation of hours and better pay for employees through a national law, were you not?

Mr. COMER. I was one of them, Senator.

Senator BLACK. Certainly in the textile industry.

Mr. COMER. Yes.

Senator BLACK. And there were two others with you?

Mr. COMER. Scott Roberts and Judge Stokeley.

Senator BLACK. Scott Roberts and Judge Stokeley?

Mr. COMER. And Fred Tyler, of Anniston.

Senator BLACK. Four of you?

Mr. COMER. Four of us. We were the committee.

Senator BLACK. And so far as wages and hours are concerned you have been and are now heartily in favor of minimum wages and a national regulation of hours?

Mr. COMER. Senator, I had reached the point where I did not want to continue spinning cotton under conditions operating back under our previous hours and wages, so unsatisfactory and yet under competition impossible to escape.

Senator BLACK. You found your competitors would use these longer hours and lower wages?

Mr. COMER. We found, like Mr. Roosevelt said, in many industries the minority which prevented voluntary group action to prevent

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those things, but that minority I won't say they were bad, Senator, as they felt like group action voluntarily could not control it, and they felt like it had to be by some national law. I think they felt that if it could be done that they would have been glad to have consented. I do not think we had a minority preventing this industry from abuses which we had been suffering under for so long; I mean in hours and low wages.

Senator WAGNER. I do not know whether you remember when the silk strike was on. I was chairman of the National Labor Board.

Mr. COMER. Yes; I remember you were.

Senator WAGNER. A duty they handed me, and I happened to make an investigation of the conditions, and I was surprised to learn in some instances they were paying skilled workers, like weavers, $6 and $8 a week, and worked them long hours, and they attributed it to the unfair competition of competitors, that dragged them down to that level. That was a terrible exhibition of exploitation.

Mr. COMER. They claimed, whether reasonably or not, that they could not control that because of violation of the antitrust law.

Senator WAGNER. Yes.

Mr. COMER. That was the reason that these minorities gave us from time to time that we enter into an arrangement where we would not violate that.

Senator WAGNER. I think that is true.

Mr. COMER. That is right. And we have to admit they were sincere in their position.

Senator WAGNER. I think that is true. But the exploit spreaders were not sincere, were they?

Mr. COMER. I think we have reached a time in our society where, with public opinion and with code procedure, that the opportunity for exploitation is fast dwindling to just normal operating conditions.

Senator WAGNER. Up to the time of the N. R. A. I should say there was a great deal of it still.

Mr. COMER. Yes, sir; I admit that, sir.

Senator WAGNER. I take it you are for the extension of the N. R. A.?

Mr. COMER. Yes, sir. I worked constantly for these shorter hours for years before they came.

I feel that with the gains in hand we should give our industry a chance to become adjusted to these gains. I am terribly distressed when I see anything attempted that I think might endanger what by comparison has been so newly and wonderfully accomplished. If there is something better ahead—and there is—let's let it come through education and experimental proving, not by statute. In the meantime, there should be more than one yardstick for better industrial relations.

As I stated when I appeared before your committee last spring, we are all of us—whether manufacturers, employees, lawmakers, or administrators—deeply concerned in finding the best formula for the best interests of the millions who toil with their hands and with their hands and heads. More advance has been made in the last 2 years, measured from the point we started at to the point

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we have finally arrived at, than has been made in any similar period of time within our memory. It is my earnest conviction that real progress always has to come by steps that we are prepared to take. I hope this committee can see the reasonableness of gradual progress, and I maintain that our present duty is to consolidate and make permanent the advance already achieved before undertaking another experiment by statute before we have realized the possibilities inherent in the present law. This is my sincere conviction. It is not presented for the purpose of haggling over phraseology or of seeking to maintain any reactionary status quo.

Is it asking too much to say let us continue to work under section 7 (a) of the National Industrial Recovery Act? Let some continue to use the American Federation of Labor unions. Let some continue to use so-called "company or employee unions." And while we are all seeking to find a better way the efforts of each of these several groups will continue to stimulate and prove out the best in all of them.

Senator WAGNER. Of course, there is nothing here to prevent that. If the workers as a result of their free choice adopt the so-called "representative plan" there is nothing to prevent them from adopting it except of course there is this limitation on the financing of it by the employer. There is not anything else in here that——

Mr. COMER (interposing). Senator, I know, but you are trying with all of your heart to help an industrial condition in this country; I am too. But with all my heart I believe that we have made all the progress in that respect in the last 2 years under our code that we ought to attempt by statute right now.

I am not complaining about your bill. The time might come when I would say I would like to help you with your bill; but I know that we have made progress in the last 2 years. I believe that a statute such as you are now talking about right now might endanger some of the good and some of the advance that we have already accomplished. Now that is an opinion, but I just ask you to take it for an honest opinion.

Senator WAGNER. Of course.

Mr. COMER. From a man who has the same purpose and the same motive you have.

Senator WAGNER. I know that. We differ upon that.

Mr. COMER. I understand you.

Senator MURRAY. Mr. Comer, we thank you for your statement and will insert it in the record.

Mr. COMER. All right. Thank you.

Senator MURRAY. Is Mr. C. A. Higgens here?

STATEMENT OF C. A. HIGGENS, REPRESENTING THE MANUFACTURING CHEMISTS ASSOCIATION OF THE UNITED STATES, WILMINGTON, DEL.

Senator MURRAY. State your name, Mr. Higgens.

Mr. HIGGENS. C. A. Higgens, Wilmington, Del.

Senator MURRAY. Whom do you represent?

Mr. HIGGENS. I represent the Manufacturing Chemists Association of the United States, a voluntary and nonprofit organization established in 1872.

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I am also a vice president of the Hercules Powder Co.

Senator MURRAY. You desire to make a statement?

Mr. HIGGENS. Yes, sir; a very brief statement, sir.

The CHAIRMAN. This is Mr. Higgens. Your full name.

Mr. HIGGENS. Charles Alfred Higgens.

The CHAIRMAN. Your residence?

Mr. HIGGENS. Wilmington, Del.

The CHAIRMAN. And whom do you represent?

Mr. HIGGENS. The Manufacturing Chemists Association.

The CHAIRMAN. How large an organization is that?

Mr. HIGGENS. According to the code, around 350 companies, with over 90,000 employees.

The CHAIRMAN. You may proceed.

Mr. HIGGENS. My own company, the Hercules Powder Co. and its wholly owned subsidiary, the Paper Makers Chemical Corporation, operates 32 manufacturing plants, located in practically every section of the United States, and at present employs approximately 3,200 pay-roll workers.

Some of these plants are small, employing less than 20 men; others are large, having in some cases more than 600 individuals on the pay roll. All classes of labor are represented—skilled, semiskilled, ordinary labor (male and female), colored and white.

The company realizes that its successful operation depends largely upon the enthusiasm and loyalty of its workers, that it is good business to maintain such working conditions as will promote a feeling of security and satisfaction on the part of its emloyees, and that the interests of company and men are, in the broad sense, mutual.

Senate bill 1958, introduced by Senator Wagner on February 21, 1935, is intended to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, and to define and prevent those unfair labor practices which mitigate against the rights and welfare of the worker.

We are in favor of the purposes cited, but we are definitely of the opinion that the bill, as written, will not only fail to accomplish the intended objective, but will have the opposite effect, that it will increase the causes of labor disputes and deprive the worker of his individual rights to which he, as a free American citizen, is entitled.

The bill clearly endorses and makes compulsory the principle of majority rule for purposes of collective bargaining. While this is the political principle on which our government is based, it is beset with practical difficulties when applied to many industrial establishments in this country.

For example, many of our southern plants employ a large number of colored workers. In some cases such workers are in the majority. It is not difficult to foresee the possible consequences of any attempt to apply and enforce the majority rule provisions of the Wagner bill at plants where such conditions prevail. Today harmony and understanding exist between workers of the different races, and such problems as do come up are handled promptly and efficiently by existing intraplant organizations.

The rights of minorities are given little thought in the bill as drawn. Section 8 states that if the majority of employees so desire it may be a condition of employment by agreement that all employees

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must be members of such organization as is representative of such a majority. This means that every worker within such a unit may have to pay tribute and be subject to the rulings of an organization perhaps far removed from the scene of their employment, and whose interest in his direct and individual welfare may be remote.

Then there are cases of labor organizations whose membership is restricted. Under such conditions an individual trying to find work may find it impossible to engage in the kind of work he desires and for which he may be best fitted.

Then too the recognition of individual merit of workers may be made practically impossible if by chance the majority of the group in which such an individual is working adopts seniority as the criterion of advancement, or other possibly illogical basis for employment.

Section 8 of the bill attempts to define unfair labor practices on the part of the employer. These definitions are so vague and indefinite as to make almost any natural human relationship between an employer and an employee susceptible of adjudication as an illegal act.

Senator WAGNER. Could I interrupt you there, or would you rather finish?

Mr. HIGGENS. Certainly.

Senator WAGNER. Would you rather finish?

Mr. HIGGENS. No, sir.

Senator WAGNER. Those are the same enumerated unfair labor practices which are now in the Railway Labor Law, and apply to all of the railway workers in the country, which is well over a million, and there has been no difficulty in interpreting what these words mean. As a matter of fact—I do not want to go into details—the courts, the Supreme Court has passed upon the identical words, and the Supreme Court did not have any difficulty in finding out just exactly what they mean. I thought you might want to know they are the law of the land so far as the railway workers of the country are concerned.

Mr. HIGGENS. Thank you, sir.

The inevitable effect of section 8 will be to diminish the highly desirable personal relationship of management and men that has resulted from years of close working contact.

From our experience in industrial operations, we believe that labor disputes—in plants such as ours—can best be settled on the spot by the people whose interests are mutual and whose knowledge of the facts is intimate. Long-distance jurisdiction or arbitration by Government boards or outside labor organization is generally inimical to the prompt and satisfactory settlement of problems which are purely local in character, and in which the human element always predominates.

We are also of the opinion that the interests of employees as well as of employers would be better served if cognizance were taken in the bill of the possibility of unfair labor practices on both sides. The present bill defines unfair labor practices on the part of employers only. But most of us have heard of cases where promoters and agents of labor unions have coerced workers into forming or joining organizations for which the employees have seen no need and

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which have resulted in loss for both employee and employer and profit to the promoter.

We will not attempt at this time to discuss the question of the legality of the bill nor its encroachments upon what we consider the individual rights of every American citizen, but are merely trying to mention a few of the practical difficulties of the bill from our experience as employers of all kinds of labor.

The Wagner bill, as written, is, in our opinion, unfair to both employees and employers. It will have the direct effect of aggravating those conditions it is intended to improve, and retard recovery. That is all.

The CHAIRMAN. Mr. Shapiro, you will come forward, please.

STATEMENT OF HAROLD ROLAND SHAPIRO, NEW YORK, N. Y.

The CHAIRMAN. Your full name is what?

Mr. SHAPIRO. Harold Roland Shapiro.

The CHAIRMAN. You are an attorney at law?

Mr. SHAPIRO. I am an attorney at law.

The CHAIRMAN. Of 74 Trinity Place, New York?

Mr. SHAPIRO. That is right.

The CHAIRMAN. Who do you represent here—yourself?

Mr. SHAPIRO. I represent myself. I am professor of administrative law in the New York Law School, and have come here solely in the interests of patriotism, and in an effort to contribute something toward the solution of a most pressing industrial problem.

The CHAIRMAN. We would be pleased to have your views.

Mr. SHAPIRO. At the outset may I express my congratulations to Senator Wagner upon his masterly bill. It is unusually clear, and from the administrative viewpoint represents a distinct advance.

This morning I heard a gentleman bemoan the fact that the bill outlaws the company union. While the bill does not say so its effect upon the company-dominated union would seem inevitable. Certainly, company unions, by furnishing all employees of an industrial unit with a common forum and a common organization, have been potentially, at least, excellent breeding grounds for outside union. So that if the Wagner labor disputes bill does not have the tendency to outlaw the company union, it seems, in the nature of things, that the inroads of Communists and other so-called "left" unions will sooner or later result in management preferring to affiliate with a conservative labor organization like the A. F. of L. as the lesser of two evils.

Therefore, it would be wisest from a long-range view-point to recognize the inevitability of the outside labor union in industry, and to regard the Wagner bill as an attempt to assuage employer and labor pains during the period of adjustment. In effect, this means that industry and its present employees, as well as those who would like to join a labor union at some future time, must be protected from the little bit of bad in every good little closed shop.

Of all the classes of forgotten men aided by past legislation, none has been so helpless and inarticulate as the individual member of a union local, whose silence has been due to an economic helplessness arising from fear that he may offend the officers of his union.

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Many a union-man would rather bear the ills he has in the union than lose his union card by daring to protest openly at union meetings against the mistakes or injustices of a small minority which perpetuates itself in union offices.

The CHAIRMAN. Do you not think the N. R. A. and the codes adopted under it has been helpful to all members of the laboring class?

Mr. SHAPIRO. I believe that the N. R. A. has had a considerable effect in aiding labor, particularly unorganized labor, in that employers who have not been unionized have been particularly fearful of the possibility of unionizing, and have therefore paid their workers the minimum wage. To the extent that coercion and intimidation may have been practiced by union subordinates in forcing workers to join a union, and I do not pass upon the moral validity of that practice, the practice has not always ceased after the industrial unit has been organized. In some cases the boss or foreman has merely been superseded by a union delegate as the economic threat to the worker. Although many a union man is silently suffering, he will not appear before a Senate committee, or any other committee, under the present system of union control, for fear of reprisals, not from his fellow-workers, but from the self-perpetuating hierarchy which inevitably persists where there is no legal restraint.

Viewing the tendency of the Wagner labor disputes bill to develop closed shops, I look ahead at the date of the young men, who are not old enough yet to join any of the new unions, and who, because they were not in " on the ground floor " when the union was soliciting members, may find themselves plumb out of luck later. Many a union's closed shop has degenerated into a situation wherein persons on the inside look out for themselves, have denied admission to eligible workers for no better reason than that they decided to close the membership books. Certainly, it is not part of our American plan to perpetuate a system which copies from the placards of the factory gate, " No fellow workers wanted."

I speak, therefore, not in opposition to the bill, but ask that it be amended in behalf of the countless numbers of economical lost sheep who would rejoice in their union membership if a general house-cleaning of unfair labor practices could be effected inside the union. It is only fair that union labor officials who make a bid for the favor of government employees and nonunion employees should at least do as much as industry has done in its own internal relations and in its dealings with labor, namely, to come clean and undertake to stay clean when they come awooing for majority rule. The greatness given to labor would prove a boomerang and destroy many of the unions through the perpetuation of the past methods of some union leaders, unless adequate safeguards are given to them as the greatest favor which friends of the labor movement could give to an organized labor they desire to grant progress.

Corporate directors are charged with specific duties and liabilities by statute for the protection of stockholders, creditors, and the general public. Public utilities and even the stock market is under Government supervision. Trade associations have been ineligible to represent their industries under N. R. A. unless they have revised

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their constitutions and bylaws to meet N. R. A. requirements, and eliminate the inequitable restrictions on membership, discrimination against small enterprises, or tendencies to monopoly. Code authorities are subjected to a strict accounting of funds and accountability for the powers they have been delegated. Industry is subject to numerous labor regulations under N. R. A. Codes, Federal and State statutes, and municipal ordinances, and must either clean house through the N. R. A. or look forward to being purged of unfair methods of competition by some other governmental body.

But American industry cannot continue to exist half-regulated and half-free. What is sauce for the goose must become sauce for the gander. Labor unions must be regulated or allowed self-regulation under Government supervision in order to protect the unions and union membership from abuse of power. I am, therefore, proposing that the unions be permitted some measure of self-regulation, and that pending the adoption of such a proposal in which unions will be permitted to come to Government in like manner as industry members have done to N. R. A. and submit codes of labor ethics under the guidance of consumers and industry, that pending the occurrence of such event that unions as a condition precedent to the granting of any rights to majority rule shall be required to submit and abide by certain fair-trade practices. First, most urgent is the regulation of the union's internal set-up. Union officials should be required to keep adequate books and proper bank accounts, to give bond for the proper care of money in their custody and control. To this end periodic audits of all income and expenditures should be made mandatory. Such audits would become a powerful weapon in helping eliminate union tribute to underworld racketeers in situations where Government agencies hitherto have been powerless.

Second. Annual elections by secret ballot under Government supervision would eliminate the fraudulent elections which sometimes perpetuate faithless union officials in power.

Third. It should be a serious offense to take strike money from sick- or death-benefit funds, except by extraordinary authority from the membership.

Fourth. Since "closed shop" can become an economic threat to qualified workers who are not union members, a union should be prohibited from imposing inequitable restrictions on its members or on admission to membership by demanding excessive initiation fees or exorbitant dues, or otherwise to exclude workers who meet the reasonable educational or similar qualifications for the trade.

These are the words of Samuel Gompers himself:

> Suspension or expulsion should be prohibited except for traitorous conduct proven upon a fair trial.

And, further, union members should be protected by law when making complaints for violations of these provisions. And I believe that the Wagner labor disputes bill would cover these particular points if these amendments were included.

The union's relations with employers and nonunion employees: Because the power to call or call off a strike becomes an instrument of oppression and betrayal in the hands of unfaithful union officials it should be illegal for a labor union to strike or to call a strike

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until the rank and file have had an opportunity to give the question adequate consideration and to vote on it by secret ballot without interference, restraint, or coercion either from anyone within or outside of the union.

Then the following, which is perhaps more controversial, and which is not necessarily so much a part of the plan that it should interfere with the legitimate order if it is not considered favorably by the committee:

Section 7 (*a*) of the N. I. R. A. should be amended to read substantially as follows:

> That employees shall have the right to organize and bargain collectively through representatives of their own choosing and shall be free from interference, restraint, or coercion of employers of labor, or their agents, or of labor organizations, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The CHAIRMAN. What change would you make in 7 (*a*)? What change did you propose in section 7 (*a*)?

Mr. SHAPIRO. The change in 7 (*a*) was that they shall be free from

> interference of employers or their agents, or of labor organizations or their agents.

Jurisdictional disputes: Samuel Gompers declared that jurisdictional disputes between rival unions were a greater menace to organized labor than hostile employers. The toll exacted from employers, workers, and consumers through stoppage of work is at least equally severe. Jurisdictional disputes should be placed under the compulsory jurisdiction of impartial tribunals, appointed by the President. And a final bargaining is made in one of the sections of the Wagner labor disputes bill.

Regulation of labor unions along the lines I have indicated might not be palatable to all of the industrialists whom I have consulted, nor to all union leaders.

One business man's main objection was that it might make labor union honest and thereby improve their chances to organize those who have feared loss or injustice from selfish union officials.

In that respect, if I may without mentioning the name, I have here a part of a communication which was signed by the director of personnel service of an enterprise in response to the request for an opinion from the head of the organization.

> It is my further thought—

says this opinion of the director of personnel service,

> that the abuses which the labor unions themselves are inflicting on their membership through the misuse of the funds and through coercion are bound to result eventually in the break-down of the entire organizations. On the other hand, if we attempt regulation of these organizations, which will require them to make proper accounting of their funds and cause organization more effectively in order to bring this about, we will be making a substantital contribution to their cause. Consequently, I believe—

says this director of personnel,

> that we should concentrate on the building of our own organization under the present law and let them do likewise.

Now, when I told one of the leaders of industry, whom I happened to meet in Washington months ago, this discussion, this very nature

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of matter of my plan, he reminded me of Hamlet, who, when informed that the world was going honest, replied, "Then is doomsday near."

Another leader of industry felt that labor leaders could never be made honest through codes. But if that was true the same thing would apply to any efforts to make business men honest. He further felt that any code from the present administration would be a "stacked deck" against the employers. A third employer argued that employees should rather be persuaded by fair treatment that they had nothing to gain by joining a labor organization.

The fourth industrialist would object on the ground that codification of labor unions would foster "class conciousness."

One of these men told me personally that an article in The Nation pointing out certain of the abuses on the part of labor leaders has been circulated in large numbers throughout the West by employers, so that the employees should be properly educated with regard to the lack of need of joining a labor union.

However, I was surprised at the number of industrial executives expressing themselves that they felt that labor union regulation, if it could be attempted under what they referred to as the "present labor administration" in Washington, would be a consummation devoutly to be wished. Frankly, I was surprised when one nationally known figure, who is respected throughout the land, declared,

> It seems to me inevitable that if labor unions are to enjoy statutory sanction they cannot hope to escape the same degree of governmental supervision to which industry is subject.

Now, regardless of what might motivate an employer to favor labor union regulation, it is my view that labor should be regulated for their own good, and for the perpetuation of the union-labor idea, for the protection of the large number of nonunion employees who will brought into unions inevitably under the provisions of the Wagner disputes bill, and for the protection of the general public which suffers whenever there is maladjustment in industry. Certain it is that if labor unions were subject to the controls I have outlined, it would result in happier days for the rank and file of labor unions and the employers alike.

I am not talking of imposing a code upon labor. I am asking that labor be accorded the same privilege of presenting its own code at least to the extent of giving labor the opportunity of setting forth what in its mind are the greatest abuses within labor organizations, so that a house cleaning might be effected comparable to what is happening in bar associations, in various other professional groups and throughout the length and breadth of the land for the protection of large groups of so-called "forgotten men."

It was Mr. Justice Cardozo, who, in a decision in the *Bulk Sales Law Case* which reversed a previous view of ruling of the court of appeals, said that the needs of successive generations may render restrictions imperative which seem vain and capricious to the vision of times past.

The day has come when the union worker, the inarticulate union worker, who frequently has been silent because of fear to speak, because of the fact that persons in union offices have perpetuated themselves, and without the same restraint which is required of other

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groups, shall be given this Magna Carta of labor which should be recognized and protected by the Government in their efforts as members of a union to survive in what may be eventually the only source of employment, or the only means to employment that may be available to such union members.

The CHAIRMAN. Mr. Davis, will you please come forward?

STATEMENT OF WILLIAM H. DAVIS, CHAIRMAN SPECIAL COMMITTEE ON THE GOVERNMENT AND LABOR OF THE TWENTIETH CENTURY FUND, INC., NEW YORK, N. Y.

The CHAIRMAN. Your full name, Mr. Davis?

Mr. DAVIS. William H. Davis.

The CHAIRMAN. You are an attorney at law?

Mr. DAVIS. I am an attorney at law.

The CHAIRMAN. And residing in New York City?

Mr. DAVIS. In New York City.

The CHAIRMAN. Whom do you represent, Mr. Davis?

Mr. DAVIS. I come here as the chairman of a committee that was appointed by the Twentieth Century Fund, Inc. Shall I tell you who they are?

The CHAIRMAN. Yes, sir.

Mr. DAVIS. The Twentieth Century Fund, Inc., is a fund established by Mr. Filene, of Boston, for the purpose of investigating controversial subjects of public interest.

The CHAIRMAN. Mr. Edward Filene?

Mr. DAVIS. Mr. Edward Filene. And one of the subjects of investigation on this year's program was the subject of labor and government. And the process of investigation is to appoint a research staff. A staff was appointed in this case under the supervision of Mr. Evans Clark, who is the manager of the fund, and under the immediate direction of Mr. Bernheim, Mr. Alfred L. Bernheim; and the research staff proceeded to gather its material, and in accordance with the custom of that fund a committee was selected and named.

The function of the committee is only to consider the material that is assembled by the research staff, and to express its own views on that material. The committee has no power over the staff at all. It merely takes that material and examines it and reports on it.

I was made chairman of the committee, I think, because I was located in New York and most of the other members were outside of the city.

Mr. William L. Chenery, the editor of Collier's Weekly, was a member, and Henry S. Dennison, president of the Dennison Manufacturing Co., and former chairman of the Industrial Advisory Board of N. R. A., Mr. William M. Leiserson, chairman of the National Mediation Board for the Railroad Industry, and formerly connected with the Labor Board established under N. R. A., of which Senator Wagner was the head, Prof. Sumner H. Slichter, who is professor of business economics at Harvard University, and Mr. John Winant, who was former Governor of New Hampshire, and chairman of the President's Committee to Investigate the Textile Strike and author of the Winant Report, and that committee after studying these data collected by the staff, and as the result

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of many conferences with one another, arrived at recommendations on the basis of this material.

Those findings and recommendations were embodied in a document which I shall be very glad to leave with the committee, if they want it.

The CHAIRMAN. Does the document deal with this bill?

Mr. DAVIS. Not directly, but as the result of those findings and recommendations, and because they deal with the same subject matter as the bill, the findings and recommendations were completed just about the same time that Senator Wagner introduced the bill.

There was so much similarity between the recommendations and Senator Wagner's bill that that led the committee to make a direct comparison between the two and to formulate recommended changes in the Wagner bill as it is now proposed.

I have prepared a statement at the request of the committee, that is of the committee of the Twentieth Century Fund, a statement which specifically recommends changes in the bill and states briefly in each case why we think those changes should be made. The Senators will understand that I am appearing here as the spokesman for that committee, and that these recommendations are unanimously agreed to by the committee and are not emanations from my own knowledge of the subject which is in fact much less than that of most of the members of the committee. My own familiarity with the subject is really from my experience with N. R. A. I was director of compliance there for a while and had experience with that.

The committee's study of the facts that have been collected by this research staff led directly to the conclusion that the most immediately pressing problem is the fostering and development of collective bargaining, and it was apparent that that involved immediately an adequate assurance to the employees of the free exercise of their right to organize and to select their own representatives so that in the process of collective bargaining the employees' representatives might be as free from employer influence as the employers' representatives were free from employee influence.

It was clear that for successful bargaining the two parties must be represented by equally free agents and a study seemed to make it equally clear that the policy of section 7 (a) of the Recovery Act, which had been repeatedly declared by Congress in other acts, had been defeated in practice by a confusion of functions and the overlapping of authority and the deficiency of power in the national and industrial labor relations agencies that had been created under and in connection with the act.

The deliberations and study of the committee in the light of these facts, which I may say were quite independent of anything that was going on here in Washington, and we had no knowledge of what Senator Wagner was going to do, but it turned out when the two things were published almost simultaneously that the committee had been following a course of reasoning and had come to conclusions which were fundamentally in accord with those thoughts expressed in the Wagner bill.

The CHAIRMAN. When did your committee function?

Mr. DAVIS. The findings and recommendations which were the act of the committee were published February 26 of this year.

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The CHAIRMAN. Did you not have before you the Wagner bill of last year?

Mr. DAVIS. It was before us, Senator, of last year, yes.

The CHAIRMAN. You had the benefit of all that?

Mr. DAVIS. Yes; we all knew that; yes. For instance, the committee recommended the reaffirmation, as Senator Wagner did, of the right of the employee to organize and choose his own representatives uninfluenced by employers. And they also recommended the creation of an independent, semijudicial Federal Agency with genuine powers to enforce its own decisions.

And the committee also recommended, as Senator Wagner did, that the choice of representative should be by the so-called "majority rule."

Agreeing this far with Senator Wagner's bill, that is agreeing fundamentally as to the means of curing the deficiency of power that had been disclosed in practice under the N. R. A. and in section 7 (a) of the Recovery Act, the recommendations of the committee went beyond the Wagner bill in three particulars. They evidenced a greater, or they attempted perhaps, I should say, a greater concentration and a cleaner separation of functions. That is, the committee felt it was of paramount importance, and could not be overemphasized, and apparent from experience that the functions of mediation and all that goes with mediation, arbitration, and investigation by Presidential authority, if that is desirable, that all of those things should be rigidly separated from the law enforcement function of this proposed agency. I cannot say that too strongly; that is, that every step in our study of this research material, which by the way I shall be very glad to furnish to the committee, as some of it is now in shape, which the committee can have, if they want it, but at every step we seemed to encounter this same necessity.

And, secondly, we thought that the grant of power to the committee should be somewhat more comprehensive, and that should be effected by a more comprehensive definition of unlawful practices.

In the recommendations of the committee, published on February 26, 1935, those recommendations did not disclose the form of machinery that Senator Wagner had proposed—that is, the form of declaring by law what were unfair labor practices, and then giving to this board or commission the power to issue cease and desist orders. We were not so specific as that. But following that thought and in proposing amendments to the bill the committee felt that there should be a broader definition of unlawful practices, and we felt, rightly or wrongly, that there was a certain ambiguity in some of the phraseology of Senator Wagner's definition in his section 8 that could be improved upon. So that was the second head of our recommendation.

And the third was a suggestion intended to offer a positive inducement to labor and industry to enter into collective agreements by means of permitting the registration with this proposed board, or commission as we prefer to call it, of agreements that have been entered into, so that if both parties wanted to register these agreements with the commission that the commission would have power to issue cease and desist orders in support of those agreements.

The CHAIRMAN. Would it have power to issue such orders against employees?

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Mr. DAVIS. Yes; either employers or employees.

So, specifically, if the Senators care to have them, we recommended that the name of the proposed agency be changed to the Federal Labor Commission, instead of the National Labor Relations Board. Now it may seem to you gentlemen a little meticulous for this committee to be recommending a change in the name of an instrument of the Government of this sort, but the committee felt very deeply on the subject of divorcing this proposed board, or commission, from all mediation functions. And the name of the Labor Relations Board has become so tied up in the public mind and in practice with mediation functions and the proposed functions of the Board, or of the bill, provided for in the bill are so analogous to the powers and functions of the Federal Trade Commission in a different field that the committee felt it would really be worth while to recommend seriously a change in the name so as to emphasize by the name, Federal Labor Commission, this same sort of semijudicial independent law enforcement function that is represented by the Federal Trade Commission in another field. And that by throwing away the name National Labor Relations Board, it might be hoped to throw away with it these functions of mediation which the committee thought the Board ought not to have, and which it is not given by the bill as we understand it.

Then along that same line and for the same purpose we proposed that section 12 of the Wagner bill, which empowers that proposed board to appoint others to act as arbitrators in labor disputes, should be omitted from this act, because the committee believes that the arbitration provisions of the proposed section 12 of the Wagner bill might appropriately be included in a separate act of Congress providing for the creation of a new Federal mediation agency, or the strengthening of the existing Federal mediation agencies in accordance with recommendation three of the committee's findings, our recommendations of February 26.

To make my ideas and the committee's perfectly specific on that subject, it is our feeling, and this was the unanimous feeling, and the various members of the committee had had experience of the same difficulty from different angles. For instance, Mr. Leiserson from the angle of the Labor Board, and then from the Mediation Board of the Railway Act.

Senator WAGNER. He was also chairman of the Petroleum Board.

Mr. DAVIS. And chairman of the Petroleum Board. And he had been in intimate contact with the whole story. I think Senator Wagner will agree that Mr. Leiserson was in as close touch as anyone with that story.

Senator WAGNER. Yes.

Mr. DAVIS. I myself had had the experience in the attempt to enforce N. R. A. generally as compliance director. And students of the subject like Professor Slichter, who had been observers merely from the outside, and Mr. Chenery, who has had practical contact with labor relations in the printing industry, and is a student of the subject, and Mr. Dennison, who had been on the Labor Board, I think, at one time as the representative of industry, and, of course, Governor Winant, who had this practical study and experience, we all felt that this mediation function, this attempt to be both a mediator

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and a law officer, was what had gotten the Board into great difficulty in the past. And, as I say, to make this thing specific in the minds of the Senators here, our recommendation comes to this, that these field agencies of the National Labor Relations Board, the so-called "regional boards", should not be agencies of any such board as is proposed by the Wagner bill, that is, any board with power, and that those agencies are in fact, as I think Senator Wagner will agree—he knows the story pretty well—are in fact mediation agencies and not law enforcement agencies at all. If they have a problem of law enforcement in the National Labor Relations Board it comes up to Washington. It is never settled in the field. So that I say that those field agencies belong to the mediation service, and not to the National Labor Relations Board, as proposed by Senator Wagner's bill, which ought to be a law enforcement agency.

And for that reason one of the things we recommend is the elimination of section 12, unless the Senate should think it advisable to include in the act a complete restatement and a fixing of the status of the Federal Mediation Service, or the conciliation service of the Department of Labor. The point the committee has in mind is the complete separation of the two, administratively.

The CHAIRMAN. If a complaint originated under this law relating to an unfair labor practice would you in the first instance have mediators of the Department of Labor make an investigation, and say an adjustment could be reached, and in the event that no settlement can be had provide them for the making of the complaint to this Board through the Department of Labor, or through any aggrieved party?

Mr. DAVIS. I think I would do just that, Senator. The machinery, that is, the administrative machinery——

The CHAIRMAN (interposing). Pardon me. You would try to narrow all of the activities of this Board or Commission to sitting in judgment on complaints that had merit, or that have some substance behind them, and finding the facts and issuing its orders to cease and desist?

Mr. DAVIS. With the exception that I would not deprive the Board of this power of holding elections.

The CHAIRMAN. Yes; I meant that. I should have included that.

Mr. DAVIS. Yes.

The CHAIRMAN. But you would not have this board send out investigators or agents or conciliators or mediators into the field, but only permit that to be done by some other department of the Government, or the Department of Labor, and permit the board simply to act as a fact-finding body or court to issue orders?

Mr. DAVIS. Yes; that is, if there was a charge that there had been interference that is a violation of the act, if that came initially to this board I would have them refer that to the mediation service as the first step. Of course, these are problems, Senator, of timing. These things are always difficult and involve administrative cooperation of the best kind to get efficient results.

But I think I agree completely—that is, my answer to your question is completely yes, if I understand it.

The CHAIRMAN. I was quite impressed, Senator Wagner knows, with that aspect of the subject last session. I did not know whether we could report the bill with that in it or not.

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Senator WAGNER. Of course, mediation and conciliation should be kept in the Department of Labor; I agree with that. We do not attempt to bring that function under this board at all. They have to stay under the Department of Labor. But if you restrict the board or the commission, whatever you want to call it, and say that it cannot send anybody out to take testimony or make an examination, for instance, in some locality, I think perhaps that is a little too restrictive.

Mr. DAVIS. I did not think that was involved in Senator Walsh's question.

The CHAIRMAN. If it took jurisdiction it could do that.

Mr. DAVIS. Oh, yes. I think this board ought to have absolute power and complete power when it comes to the jurisdiction.

Senator WAGNER. Of course on mediation and conciliation I am always for permitting any machinery to make those effective.

Mr. DAVIS. I know you are, Senator, but I say this: You cannot mediate a question of law. It is impossible. We learned that. You know that.

Senator WAGNER. Yes. We do not differ on that.

The CHAIRMAN. Unless you are careful about that it puts this board into the position of prosecuting through it the employees' cases that would come before it, does it not?

Mr. DAVIS. It is the same sort of difficulty that embarrassed the Federal Trade Commission very greatly, and I am speaking now from my personal views rather than those of the committee when I say I would go very far in the direction of limiting the powers of this board to initiate the investigation. I am not sure that I would limit it absolutely to questions where complaints had been filed, because there is always the difficulty of getting an employee to file a written complaint. You have to take that into account. But I certainly would relieve it of that embarrassment and source of emergency which existed in the Federal Trade Commission and led in the early days to difficulty.

The CHAIRMAN. If we do not proceed carefully we will have a conflict here. Let me illustrate. The other day I was called on the telephone at 10 o'clock at night and informed of a strike in one of the mills in the town in which I live. And I called on the Department of Labor to send a conciliator up there. Now, the State had already had one go there, the Department of Labor had one there, and this board, if its authority is multiplied, would have a conciliator there.

Mr. DAVIS. If they could all act with as much conciliator spirit as the term implies maybe it would not do so much harm. Of course, there has been a great confusion of functions.

Senator WAGNER. It was the intent to keep that function in the Labor Department. That is the reason there is no such power given to the board under this act.

Mr. DAVIS. That was our understanding of it.

Senator WAGNER. Yes.

Mr. DAVIS. That the act did not propose to diminish the functions of the conciliation service of the Department of Labor.

The CHAIRMAN. The earliest act which we considered last year did.

Senator WAGNER. Yes; the first act.

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Mr. DAVIS. We could not see, Senator Wagner, frankly, just why you proposed, when it was clear from the act that you did not propose to transfer to this board any of the conciliation services of the Department of Labor, why it was deemed wise to put in it this voluntary arbitration provisions.

Senator WAGNER. That is sort of a judicial thing. That is not a matter of mediation. That results in an absolute decision based on evidence.

Mr. DAVIS. Yes.

Senator WAGNER. That is more judicial than——

Mr. DAVIS (interposing). Than mediatory?

Senator WAGNER. Yes. And I thought in a very important controversy if this board has the prestige which I hope it will have people would not hesitate to submit a controversy to them as arbitrators, whereas they may hesitate to submit that same question to a mediator.

Mr. DAVIS. In my own view, Senator, and in a sense it is a minor thing, but I am so impressed personally from what I have seen and the contacts I have had with the immediate and tremendously great importance of breaking this log jam and solving, or beginning to solve the problem of designating representatives, that I would like to see this board confine itself to that one function.

Senator WAGNER. Yes; there is a lot in what you say.

Mr. DAVIS. If the board starts out wrong we know that from experience if they make one first mistake by going beyond their authority that would discolor the whole program adversely.

Senator WAGNER. I agree with you.

Mr. DAVIS. The next specific suggestion we had to make was with regard to section 10 of the bill. If the Senators would look at this section you will get an idea of what we are trying to do. The section 10, as it reads, paragraph (a), is as follows:

SEC. 10. (a) The Board is empowered, as herinafter provided, to prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce.

Now that first sentence we propose to replace by the following:

The Commission is empowered, as hereinafter provided, to issue a cease and desist order to prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce.

That is, instead of saying, "is empowered to prevent", we say, "is empowered to issue orders." There were two reasons for that. It seemed to us it should be made perfectly clear that this board and this board alone has the power to issue this type of order. What will happen after that order is issued is provided in the bill. It goes to court if there is any dispute about it.

The CHAIRMAN. In other words, you define more specifically the prevention power.

Mr. DAVIS. Yes.

Senator WAGNER. Affirmatively, would not that be better?

The CHAIRMAN. Yes; affirmatively.

Senator WAGNER. It is rather more affirmatively.

Mr. DAVIS. There is an element in it, Senator, and it is of the story I am sure you are familiar with, about the common council in our native town that passed a resolution, so it is said, that the picture of

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our beloved mayor be, and the same hereby is, hung on the walls of the council room.

This empowering to prevent——

Senator WAGNER. (interposing). Yes.

Mr. DAVIS (continuing); which we would like to do. And the next sentence was this power in the bill shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise, except as provided in section 11, it seemed to us that that language was ambitious. The purpose of it, I think, is to assure that this board shall have superior power to all the other boards.

Senator WAGNER. Yes; that is the purpose.

Mr. DAVIS. We propose to say it differently:

The power to issue such cease and desist orders shall be vested exclusively in the commission.

We call it a commission instead of a board.

Provided, That nothing in this section shall limit the jurisdiction of the several district courts of the United States as provided in section 11.

What we are trying to say there, Senators, is this board shall have the power to issue cease and desist orders. If any other board or board agency, we will say, the workers and the management in some industry agree among themselves to create a board, which of course they have the right to do——

The CHAIRMAN (interposing). Or any court that may adjudicate or adjust the matters, or any other law anticipating the power of cease and desist.

Mr. DAVIS. But they have to come to this Commission, you see, because I think this contemplates no other function. If this board wanted to say to the petroleum board, "We are going to conduct an election, and to empower you to do it for us," that would be within its power, but anything that the petroleum board or textile board or any other of these boards, any time when they came up to a member of the industry who refused to obey the law, who would interfere or whatnot, then they would have to call on this national board for the cease and desist order.

It is another way of saying, I think, that these special industrial relations boards in the several industries would be mediation boards and not law-enforcement boards. It is a further carrying forward of the idea of dividing these two functions. That is, the power to be given to the Commission or board is the power to issue orders to cease and desist.

The Federal Mediation Service and the various industrial boards will not have that power and must come to the proposed Commission for any such order. Here the words in the bill "shall not be affected by any other means of adjustment or prevention that has been or may be established" and so forth, are ambiguous in the extreme. In them might well be found a place of lodgment for seeds of trouble that would mar the performance of the proposed Commission and lower its position in public esteem at the very outset. I think Senator Wagner will agree with me that it is at the outset this thing is going wrong if it goes wrong at all.

The next suggestion we had to make was with reference to section 7 of the bill.

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We recommend that section 7 be replaced by the following:

The right of the employees to full freedom of association, self-organization, and designation of representatives of their own choosing for collective bargaining with their employers is hereby recognized and affirmed. It shall be the duty of the Commission to foster that right, and to encourage collective bargaining.

Now, inasmuch as this right already exists, the natural right, it seemed to us better that the Congress should merely affirm it as an existing right than that the form of the expression in the bill should be adopted, which seems to create the right. Of course, the right has been affirmed over and over again by the Congress.

Senator WAGNER. Yes.

Mr. DAVIS. In Coolidge's time and Hoover's time and the present administration.

And the bill itself does not really declare the duty of the board anywhere, it seemed to me or to us, and so we added this sentence:

It shall be the duty of the Commission to foster that right, and to encourage collective bargaining.

And then for section 8, which are the definitions of unfair labor practices, we recommended a substitution.

The bill starts out: "It shall be an unfair labor practice for an employer" to do certain specified things.

We recommend the following:

It shall be an unfair labor practice—

(1) For anyone to interfere by fraud or violence with the free exercise by an employee of his right to participate in the formation of a labor organization or with the free exercise of his right to choose representatives for collective bargaining.

The purpose of that was to give the Commission the same power necessary, we thing, to its effective functioning to issue cease and desist orders against fraud or violence that the Federal Courts now have to issue injunctions in labor disputes against fraud or violence.

The words "fraud or violence" are the words of the Norris-LaGuardia Anti-injunction Act. That is the limitation on the power of the Federal courts to issue injunctions in the Norris-LaGuardia Act in labor disputes against fraud or violence. And so we thought that this board should have the same power, or otherwise this condition might exist. The board has taken jurisdiction of a dispute. Something comes up. It has complete power to issue its orders. Fraud or violence comes into the picture. Unless it can issue its orders against that then it must go by the roundabout course of going to a Federal court, which it has the power to do under section 11 of the bill, getting that court to enjoin the fraud or violence which is interfering with the function of the board in that particular dispute.

However, it is important to note this, that the effect of this paragraph in any case is limited to the jurisdiction of the Commission itself over unfair labor practices. It does not enlarge or diminish the jurisdiction of the Federal court, and it could not afford any basis for suits by employers against their employees in those courts. The power of this first section is limited to the jurisdiction of the Commission, and no action can be taken under it for fraud or violence, except before the Commission; for any other act of fraud or violence the Federal courts are open as they are today. I am emphasizing that

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to you, Senators, because in some of the discussion that has come to my attention on the subject it has been suggested that our proposal would open the door to fear. And I am frank to say as to what is generally stated in the committee's recommendation of February 26, the general language is, I think, too broad for a statute.

But this language that we put in paragraph 1 here is, we believe, desirable and necessary to the full functioning of the Commission, and we do not believe that it will open the door to oppression of anyone. We are assuming, of course, an intelligent or upright commission or board. The only door it opens is the door of the board in any event.

The CHAIRMAN. Will you read that again, that language?

Mr. DAVIS (reading):

> It shall be an unfair labor practice for anyone to interfere by fraud or violence with the free exercise by an employee of his right to participate in the formation of a labor organization or with the free exercise of his right to choose representatives for collective bargaining.

We go on in the next paragraph, following rather closely Senator Wagner's sections, to set that off by this language:

> It shall be an unfair labor practice for an employer to interfere in any way with the free exercise by an employee of his right to participate in the formation and in the activities of a labor organization or with the free exercise of his right to choose representatives for collective bargaining, or to contribute financial or equivalent support to any such labor organization.

Now, we believe that the broader prohibition as against an employer is of the very essence of the situation, as we understand it is the purpose of the Wagner bill, that is, the power of an employer to influence the representatives of his employees, or to influence his employees themselves is vastly greater than the power of an employee to influence his employer. We all know that. And in the minds of this twentieth century fund committee the fundamental thing to be done now, is absolutely clear the representatives of the workers from all influence of the employer. And we do not think that that means that you are saying that employees and employers cannot sit across the table and deal with one another, bargain with one another, that they must be enemies, but we do say that you cannot get strong, outright friendly cooperation, unless you have equal parties on the two sides of the table. By that we mean equally free to represent the people they are there to talk for.

The CHAIRMAN. You used the word "influence." I thought you used the word "interference."

Mr. DAVIS. We did use the word "influence."

The CHAIRMAN. In this discussion you used the word "influence."

Mr. DAVIS. I did; yes.

The CHAIRMAN. There is a great deal of difference between "influence" and "interference."

Mr. DAVIS. Yes; I think there is. But I used deliberately the broadest word in my talk.

The CHAIRMAN. Will you read that language again?

Mr. DAVIS. We say for an employer to interfere in any way.

The CHAIRMAN. You would not object to an employer saying to his men, to his employees, that so-and-so and so-and-so, who has attempted to organize you, we think, represents un-American ideals

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and purposes in trying to organize a Communistic labor organization.

Mr. DAVIS. I would not make it unlawful for an employer to say that. If I were an employer, I would not say it to my own employees.

The CHAIRMAN. No; of course not. That would not be interference. That would be, perhaps, influence.

Mr. DAVIS. I do not think it would influence them an awful lot, Senator.

The CHAIRMAN. No; but it would be.

Mr. DAVIS. It would be an attempt to influence them.

The CHAIRMAN. And to make suggestions, of course, is not interfering.

Mr. DAVIS. Yes. And it might be 100 percent a good intent. My only opinion is that an employee is just as well able to decide what is happening to him in Communism as the employer is.

The CHAIRMAN. Could you prevent him from urging his men—I would not say urging—in trying to influence his employees to form a company union in preference to another form of union?

Mr. DAVIS. Yes; I certainly would.

The CHAIRMAN. To influence them?

Mr. DAVIS. Because you go to a man whose bread and butter is dependent on your pay envelop and suggest to him you think it would be a good thing for him to form a company union. Conditions differ, of course. It depends on the relations between the men and the employer. But it so easily leads to what is coercion and fear.

The CHAIRMAN. Perhaps it is necessary to use some other word than interference then—influence.

Mr. DAVIS. We thought a good deal about that, Senator, and like all other legislation all you can do is set the bounds and let the administrative or judicial agent decide it.

The CHAIRMAN. Decide what is the meaning of interference?

Mr. DAVIS. Yes, sir. The word "interfere" has been judicially passed on in such acts over and over again. I found quite a considerable amount of learning on the subject in words and phrases. And we thought that "interfere" was the best word that could be used.

Senator WAGNER. That has been frequently used by the United States Supreme Court.

Mr. DAVIS. Yes. There is a lot of judicial literature on the subject.

Senator WAGNER. Yes; a lot of it.

Mr. DAVIS. Then we made the proviso in this Section 2:

***Provided,* That subject to rules and regulations made and published by the Commission pursuant to section 6 (a), an employer shall not be forbidden to allow to an employee his regular rate of pay for time devoted during working hours to his duties as a representative of the employees.**

That is a little broader than Senator Wagener's bill has it.

The bill reads this way:

That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

It seemed to us it was necessary and not wise to limit that to the mere time the employee was conferring with his employer, and that you could quite safely let the men do their collective bargaining work

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so far as it might be done on company time without any taint at all of influencing the men in favor of the company. And I do not see why, for instance, if you have a man who is going to confer with the employer he may be conferring on behalf of someone else, and I do not see why you should not take the time to confer with his constituents so to speak also on company time. It is a minor matter.

The third paragraph we recommended this substitute:

It shall be an unfair labor practice for an employer to discharge or discriminate against or in favor of an employee for any activity in connection with forming, joining, or assisting any collective bargaining agency of employees or in connection with the choice of employee-representatives for collective bargaining.

That corresponds in substance to the provision in the bill, which is paragraph 3, by discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage the membership in any labor organization. Now that would be too narrow for the purposes of our substitution, although it may be sufficient in the bill as it stood, which had in Section 8 the first sentence:

To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

In taking out that general sentence, or modifying it to make it embrace anyone then it became necessary to make the language of these other sections more comprehensive. And that is all we have done in section 3. And then we go on with the majority rule proviso in this form, " that nothing in this act "——

The CHAIRMAN. Are you still on section 8?

Mr. DAVIS. Section 8, yes, sir:

That nothing in this Act, or in the National Recovery Act as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the majority of the employees in the appropriate collective bargaining unit covered by such an agreement when made.

I was mistaken in saying that was the majority rule provision. That is, of course, the provision which permits the so-called " closed shop agreements." Many such are now in full force, and the facts that were before us showed that it is now——

The CHAIRMAN (interposing). Such agreement?

Mr. DAVIS. These closed shop agreements would mean immediate and terrific upset in existing labor relations much more so than I had ever supposed until I studied this data.

The fourth is we say:

For an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

And then we add as a fifth:

For either party to an agreement that has been registered pursuant to section 12 of this act to violate or to fail to observe any condition of such agreement.

In other words, that section 5 was put in here to implement the proposal of our section 12.

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Senator WAGNER. Registration?

Mr. DAVIS. Yes, registration. And in order to tie those together I will turn to our proposed section 12.

The CHAIRMAN. Just a moment. There is a new unfair labor practice proposed. Mr. Magruder, do you recall the language of that additional fair practice that has been proposed?

Mr. MAGRUDER. The provision which makes it a violation to refuse to bargain which was submitted by Mr. Biddle?

The CHAIRMAN. The practice for an employer to refuse to meet in good faith with the representatives of his employees for the purpose of collective bargaining. Was that it?

Mr. MAGRUDER. That it shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. That was the amendment proposed by Chairman Biddle.

Mr. DAVIS. I think there is some such language in that Railway Labor Act, is there not?

Senator WAGNER. There is a provision of that kind. I think it is a reasonable effort. What was that language, Mr. Keyserling?

Mr. KEYSERLING. I think in the Railway Labor Act amendment that the language seemed to be that employers and employees should make every reasonable effort to reach agreements.

Senator WAGNER. Reasonable efforts to make an agreement. That was not the language suggested here.

The CHAIRMAN. I think it is with reference to meeting.

Senator WAGNER. Yes. I think it made it an unfair labor practice to refuse to meet with the representatives for the purpose of reaching a collective bargaining agreement.

Mr. DAVIS. I think that goes without saying on the present bill.

Senator WAGNER. I think so, too. I think it is definitely implied.

Mr. DAVIS. Yes.

Senator WAGNER. Otherwise the legislation would be just definitely meaningless.

Mr. DAVIS. Yes. Of course, you can lead a horse to water, but you cannot make him drink. Our section 12 was as follows:

Registration of collective agreements: Whenever there shall be presented to the Commission an agreement between an employer and a duly represented collective bargainig agency of his employees (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice), together with a written request by both parties to the agreement that the Commission register the agreement, then the Commission shall have the power and the duty to register the agreement and to supply to each of the parties a certificate of registration thereof: *Provided*, That the Commission may in its discretion refuse registration of the agreement if, in the opinion of the Commission, the agreement is contrary to existing law or would tend to defeat the purpose of this Act, or does not contain such minimum provisions for notice of intention to change the agreement, and for adjusting complaints and disputes, as the Commission may require by appropriate rules and regulations not inconsistent with this Act.

The CHAIRMAN. Is that to be a substitute for 12, or an additional section?

Mr. DAVIS. A substitute for 12.

The CHAIRMAN. Taking out the arbitration features of the bill?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. What are the reasons for it?

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Mr. DAVIS. The reasons of the committee were these: They felt that if the well-integrated industries, that is well-integrated from the labor point of view, the industries in which there were well-organized labor it had been shown historically that the agreements made and signed were pretty generally lived up to. But there is a feeling, more or less pathetic perhaps, but based on some history, that in the less integrated industries, and particularly in the mass production industries, or in any place where an inexperienced collective bargaining group were functioning it might well happen that the agreement when signed would not be as strong and as well supported as it is with a thoroughly organized labor organization, and that that being so that both of the parties having agreed at the time to this thing might both feel better assurance if they registered it with this Commission.

You have there in that period a willingness on both sides and an intention on both sides to observe the agreement undoubtedly. You are likely to have some misgivings about it on both sides. That has been evidenced by what we have seen. And the feeling of the Commission was that if in such a case where both sides wanted to do it they registered the agreement with the Commission, and then after that the Commission had the power to enforce that agreement as long as it lasted.

There were some suggestions—there are always suggestions proposed to anything—this was some untying the hands of labor, or management, or somehow giving to the Government the power to control labor agreements. Nothing of that kind was contemplated. It was absolutely voluntary and dependent on the willingness of both sides to register. But it did seem to the committee and still seems to the committee that this affords a very real and substantial possibility of the assurance of a continuity of signed agreements, particularly in industries where the workers are equipped to bargain collectively, perhaps, but are not organized in the modern sense.

There is just one more point that I have.

Senator WAGNER. Mr. Davis, before you leave that I was going to ask you did your committee or your research agency make any surveys as to how generally, if generally, legitimate labor organizations live up to their collective bargaining agreements when they are made?

Mr. DAVIS. Yes; there was. The reports of the staff appear to cover that subject, Senator. I can let you have a copy of that section.

Senator WAGNER. Do you remember what their conclusion was?

Mr. DAVIS. The conclusion was in general very definitely that those agreements had been lived up to.

Senator WAGNER. That has been my own independent investigation, too.

Mr. DAVIS. Oh, yes. That was our conclusion very definitely.

Senator WAGNER. I asked you that because there have been a number of statements made here to the contrary, as if the labor organizations were all lawless and made agreements but did not observe them at all except as long as it suited their purpose. I do not think that is the general experience.

Mr. DAVIS. That certainly was not the substance of the reports. I will be very glad to send you that when I get hold of it.

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There is one other thing, Senator, if I might take the time, and that is in section 9 of the Wagner bill we recommend the substitution for section (c) the following, or for paragraph (c), rather, and we propose to substitute the following:

Whenever a controversy affecting commerce arises among employees concerning the representation—

and we add using the language of the railway labor bill, and emphasizing that the controversies we are now speaking of are controversies among employees—

concerning the representation of employees for collective bargaining, the Commission may, at the request of any party to the controversy or its own initiative, investigate such controversy and certify to the parties and to the employer, in writing, the name or names of the representatives who have been designated or selected;

and we add:

but the employer shall not be recognized as a party to such a controversy.

That is an idea which we are attempting to crystallize, and an idea which is foreshadowed in the Railway Labor Act, and which has been applied by nearly all the labor boards. I think the steel board and the National Industrial Relations Board and the Railway Labor Board have all ruled that the employer is not a legal or proper party to a dispute as to who are the representatives of his employees.

Senator WAGNER. In other words, it is none of his affair at all? Is that your understanding?

Mr. DAVIS. He is interested in it, of course.

Senator WAGNER. No; I said the selection.

Mr. DAVIS. But it is not his dispute. He is not a party to the controversy. We may be interested in a controversy between Belgium and England on the value of the belga today, but we are not parties to that controversy. We cannot do anything about it. And in the minds of our committee and in this discussion this thing came up over and over again, the importance of driving home the fact that the choice of representatives is a matter for the employees alone, and that when these disputes arise they are disputes between two groups of employees, and not between one group and an employer.

And when Senator Wagner looks back I am sure on his own experience he will agree with me in saying this, that the confusion that has existed on that score has been mixed up all of the time with this confusion of the mediation functions and law-enforcement functions. Always in these disputes almost invariably before the national board the employer was there as a party and mediation was in the foreground. If you say to the employer, "Now, you just stay out of this, we will decide which of these groups of employees is the majority, and therefore which one is representative"——

Senator WAGNER. Of course, the employer frequently took the stand, which a good many of them still take without any legal basis, that they have a right to decide whether their workers shall have an election or not to select representatives.

Mr. DAVIS. And all good Americans are familiar with that situation, Senator.

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Senator WAGNER. Yes.

Mr. DAVIS. We can all remember when some people thought they had the right to decide whether we could have elections or not.

Senator WAGNER. Yes; that is right.

Mr. DAVIS. But this committee and people in general have no sympathy with that idea.

The CHAIRMAN. Of course, if you take the stage of the proceedings in connection with the representatives the court would have no jurisdiction over the employer, but after it announced the rule of chosen representatives and the employer refused to recognize them then it would be in the Commission's power in the exercise of the power to issue cease and desist orders to make the employer a party to it.

Mr. DAVIS. Yes, sir; make the order against him.

The CHAIRMAN. The order up to that time would be against the group representing the workers.

Mr. DAVIS. Yes.

The CHAIRMAN. But, of course, you could not have a situation where an employer would have an order issued against him where he was not a party.

Mr. DAVIS. Yes. That is, if he came, and there was a second controversy then he would be a party to the second controversy. But in the primary matter he would not be a party.

Would it be worth while for me to leave a copy of these findings and recommendations of February 26th?

The CHAIRMAN. Do you think in view of your complete discussion of the statement of your Board that it is necessary to incorporate that in the record, the report in full?

Mr. DAVIS. I have not any idea of what your practice is, Senator.

The CHAIRMAN. We would be glad to if you wish to, but I was wondering if you had not covered it thoroughly.

Mr. DAVIS. I have two documents here. One is the findings and recommendations of the committee, which I have not discussed in detail. The other is a printed statement of what I was going to say here, and I have covered that quite fully.

The CHAIRMAN. I think the other document ought to go in.

Mr. DAVIS. I think if you could put in the findings and recommendations of the committee, I know the committee would like to have them in .

(The findings and recommendations referred to are as follows:)

FINDINGS AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE ON THE GOVERNMENT AND LABOR OF THE TWENTIETH CENTURY FUND, INC.

In the study that has been made of the role of the Government in labor relations collective bargaining between employers and their employees stands out as of predominant importance. From a difficult birth in the days when the banding together of employees to make demands on their employers was looked upon as an unlawful conspiracy in restraint of trade, the practice has grown to its present stature. In recent years, under the Coolidge and the Hoover administrations and under the present administration, the policy of the United States to protect and foster the right of employees to organize and to choose their own representatives for collective bargaining without interference, restraint, or coercion has been declared and reiterated by Congress.[1]

[1] This policy is declared in the Railway Labor Act, 45 U. S. Code 151a, May 20, 1926; in the Norris-LaGuardia Anti-Injunctions Act, 29 U. S. Code 102, Mar. 23, 1932; the Bankruptcy act (interstate railroads), 11 U. S. Code 205, as amended Mar. 3, 1933, the National Industrial Recovery Act, 15 U. S. Code 707a, June 16, 1933; and in the amended Railway Labor Act, 45 U. S. Code 152, of June 21, 1934.

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In its study the twentieth century fund has assumed that this settled policy would not be abandoned. The President in his message to Congress of February 20, 1935, has recommended that the rights of employees freely to organize for the purpose of collective bargaining should be fully and duly protected. The effective development fo collective bargaining presents, we believe, the most immediately pressing problem in the relation of the Federal Government to labor.

In the Recovery Act Congress, in furtherance of this policy, affirmed the right of the employees to organize and to select their own bargaining representatives without interference, and expressly prohibited discrimination by an employer against an employee because of such activities. We believe that reclarification of the law by further definition of prohibited practices is possiable, and that the need for more adequate administrative and enforcement machinery has been demonstrated by experience.

REGISTRATION OF AGREEMENTS

We believe, furthermore, that it is possible and desirable to go beyond the mere assertion of right and prohibition of interference, in the direction of positive and useful encouragement of collective agreements between management and labor. The organization of workers, and their choice of representatives for collective bargaining are, after all, only means to an end—the establishment and observance of written agreements. We think it is desirable that such agreements, freely arrived at between employers and their employees, should, if the parties to the agreement so desire, and after registration by an appropriate governmental agency, be sanctioned by giving to such agency appropriate power to enforce the agreements.

It must be conceded that collective bargaining is not a panacea for industrial ills; that it does not always create sound industrial relations and that too and to minimize their common interests has impaired the effective collective bargaining, insofar as its tendency may be to increase the rigidity of wage rates unduly, would create economic problems of the most fundamental sort. Nevertheless at the present time the fostering of collective bargaining should be the keystone of the Government's labor policy, in order that there may now be introduced some rough measure of equality into the bargaining power of employers and employees and the beginning of better machinery for meeting their common problems.

It is, however, self-evident that in any society in which employers and employees retain a large measure of freedom, strikes, and lockouts are likely to occur. The spread of organizations for collective bargaining is not likely, in its early stages at least, to diminish strikes and lockouts. Indeed until the two sides become used to the practice of collective bargaining and develop skill in effecting compromises, strikes and lockouts may increase. We are, therefore, of the opinion that the Government's policy of guaranteeing the right to bargain collectively should be supplemented by improved machinery for handling industrial disputes, because it is clear that in the future, as in the past, the Federal Government will find it necessary to intervene in such disputes whenever they are so widespread or so important as seriously to obstruct the free flow of interstate commerce and threaten the general welfare.

MEDIATION AND ENFORCEMENT

Confusion of function, overlapping of authority and deficiency of power are observable in the national and industrial labor relations agencies that have been created under and in connection with the Recovery Act. We are thoroughly convinced that it is essential to separate governmental mediation in labor disputes from the administration of labor law; and it is clear that the problem further requires for its solution agencies that can take care of minor law infractions and minor disputes promptly and locally and that the district attorneys and the lower Federal courts should be relieved of the burden of such cases.

We believe that these considerations point directly to the desirability of a permanent Federal labor law, not limited to codified industries but applicable in all cases that affect interstate commerce or threaten the general welfare, and creating a quasi-judicial agency vested with the power to hear and decide complaints of law violation, and carefully separated from any mediation functions.

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SPECIFIC RECOMMENDATIONS

In the light of these facts, we make the following recommendations and suggestions:

1. We recommend the enactment of a Federal labor law, separate from the Recovery Act and applicable to all industries (except railroads, which are already covered by the Railroad Labor Act) guaranteeing to the workers freedom for association, self-organization, and choice of representatives, and designed to encourage and sanction collective agreements with respect to hours, wages ad working conditions.

It is desirable that, with such particularity as is reasonably possible but without limitation, the act should define and declare to be unlawful specific acts of interference, restraint, or coercion. Thus we believe it should be declared to be unlawful:

(*a*) For anyone to intimidate or coerce employees in the free exercise of their right to organize and to choose their own representatives for collective bargaining.

(*b*) For an employer to discriminate against or in favor of an employee for any activity in connection with any employee organization, selection of representatives for collective bargaining; but this should not impair the right of an employer to make a collective agreement that requires membership in a particular employee organization as a condition of employment where the employee organization with the bargain which is made represents the majority of the employees in an established bargaining unit;

(*c*) For an employer to interfere in any way with the formation or administration of any collective bargaining agency of his employees or with the choice of employee representatives for collective bargaining, or to contribute financial or equivalent support to any such collective bargaining agency; but the allowance of regular rates of pay to an employee for time devoted during working hours to his duties as a representative of the employees should not be forbidden; and

(*d*) For an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the act.

2. We recommend that the act provide for a Federal Labor Commission, a permanent and independent governmental agency whose members shall be appointed by the President with the advice and consent of the Senate, and which shall have the following functions: (a) Jurisdiction of all violations of the act; (b) jurisdiction over all disputes that arise between or among employees on questions of employee organization and representation, with power to decide what is the appropriate unit of employee organization or association for the purposes of collective bargaining, and to hold elections and otherwise determine and certify the duly chosen representatives of such units; and (c) the power under appropriate rules and regulations to register, at the joint request of the parties, and to enforce trade agreements of definite duration freely entered into by employers and their employees.

The commission should not be a policy-making body, but should confine itself to administering policy as defined in the laws. Because of its quasi-judicial nature it should be independent of any department of the Government and should not be assigned the duty of policing the codes adopted under the Recovery Act of investigating any unsettled questions of policy.

The Commission should not be a power to enforce its decisions by cease and desist orders, enforceable in the United States Circuit Courts of Appeal at the instance of the Commission and reviewable in those courts at the instance of any party aggrieved by any order of the Commission granting or denying relief. The Commission should have full power of investigation and examination of witnesses, with the right to subpena witnesses, pay rolls, and other records, and to administer oaths. It should have the power to appoint regional directors and examiners, and to establish or utilize such local agencies or industry boards as may be found necessary. It should have the power to delegate its powers of investigation and examination of witnesses and its power to conduct elections, but it should not be permitted to delegate its power to issue cease and desist orders or its power to order elections. The jurisdiction of the Commission to issue cease and desist orders, to determine bargaining units, and to order elections in disputed cases, should be exclusive of all other agencies. The Commission should have the discretion to defer its exercise of jurisdiction until it is satisfied that all other available means of settlement have been utilized.

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MAJORITY REPRESENTATION

We believe that the representatives chosen by a majority of employees in any bargaining unit should be the exclusive representatives for all other basic working employees in that unit for collective bargaining as to wages, hours, and other basic working conditions. But it should be understood that nothing in the act will deprive any individual or minority group of the right to present to their employer grievances which do not affect the wages, hours, or other working conditions established by collective agreement.

The right of employees to organize and to choose their own representatives is a right with which the employer should not interfere in any way. Any such interference prohibited by the act becomes a violation of law. It is not a labor dispute and is not susceptible of mediation. Disputes about employee organization and selection of representatives, leading to adjudication as to appropriate bargaining units and to the holding of employee elections, can properly arise only between groups of employees.

With respect to collective agreements to be registered with the Commission, the registration should be dependent upon the consent of both parties and there should be reserved to the Commission the discretion to refuse registration if, in its opinion, the agreement is contrary to existing law or would tend to defeat the purposes of the act, and unless and until the agreement makes such minimum provisions for notice of intention to change the agreement, and for adjusting complaints and disputes, as the Commission may require by appropriate rules and regulations. Upon the complaint of either party to a registered collective agreement that the agreement has been breached, the Commission should have the power to investigate the complaint, to render a decision in regard to it, and to issue cease and desist orders; provided, however, that the Commission is satisfied that the aggrieved party has exhausted all remedies provided in the agreement.

VIOLATIONS NOT CRIMINAL OFFENSES

Our recommendations do not include any provisions making a violation of the act or of the codes a criminal offense. We believe that criminal prosecution is unwise in a plan which depends for its ultimate success on collective agreements between employers and employees. It seems preferable to rely upon the exercise of powers and analogous to the equity powers of the Federal courts sanctioned by cease and desist orders and injunctions.

It may be noted that the proposals under recommendation 2 with respect to registration of collective agreements may be thought of as a substitute for section 7 (b) of the Recovery Act. It substitutes for the approval by the President the registration by the proposed commisison under the new act.

3. We recommend the creation of a Federal mediation agency or the strengthening of existing Federal mediation agencies, with the power to mediate in all industrial disputes between employers and employees which obstruct or threaten to obstruct the free flow of interstate commerce or threaten the general welfare, and, failing success, to recommend the appointment of a special investigating commission by the President.

This mediation agency should have no power of law enforcement, but written agreements made under its auspices should be registerable with the law-enforcement agency as suggested in recommendation 2 above.

We think this mediation agency should include carefully selected and more or less permanent local panels made up of responsible representatives of employers and employees to be available when called upon to act on mediation boards.

The mediation service should be available to mediate and decide disputes arising under an existing collective agreement lawfully entered into. If the agreement is registered with the commission as recommended in recommendation 2 above, the commission would have authority to receive and decide all complaints of violation of the agreement. This would not interfere with the inherent right of the parties to settle disputes arising under registered agreements with the assistance of the mediation service.

Where the employees are not organized or have not chosen bargaining representatives, either should be free to ask the mediation service for assistance, and the service should be required to make an offer to mediate for acceptance or rejection by the other side.

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15 DAYS' NOTICE

For the purpose of providing a reasonable period within which disputes that might be given to strikes or lockouts may be mediated, we recommend that there be established by law an obligation to give 15 days' notice by employers and employees of all changes or demanded changes in wages, hours, or working conditions, except where (a) there is an agreement which provides for a different period of notice, and (b) the employees have no chosen bargaining representatives, in which case they, but not the employers, should be relieved of the obligation to give notice.

Upon notice of a contemplated change in wages, hours, or other working conditions, either the party notice or the party receiving notice should be allowed to request the mediation service to intervene, and the head of the mediation service should be empowered in such cases to intervene on his own initiative.

The mediation service should thereupon, within the statutory 15-day period, or within such extended period as may have been agreed upon by the disputants, seek to bring about a settlement of the issues in dispute or, failing that, should endeavor to induce the disputants to submit their differences to voluntary arbitration.

Failing either of those things, and if in the opinion of the mediation service the dispute is likely to result in a strike or lockout whch will create a national emergency or seriously interfere with the free flow of commerce among the States, or otherwise threatens the general welfare, then the head of the mediation service should certify these facts to the President of the United States. Under these circumstances the President should be authorized by the law to appoint a special commission to investigate the dispute and to make a report to the public setting forth the facts and a specific recommendation for the settlement of the dispute.

These recommendations do not include any limitation by law upon the right to strike or lockout.

4. We recommend, finally, that a special commission be created to conduct an intensive study of the practices of employers and employees in collective bargaining and industrial disputes, as well as the internal operations of the agencies through which these relations are carried on, in order that it may recommend to Congress further definitions of such unlawful labor practices as involve unfair interference on the part of employers with employees or on the part of employees with employers.

The nature and conduct of agencies of collective bargaining become of increasing concern to the public as these agencies become increasingly responsible for important trade agreements. This fact will lead to a demand for specific legislation in these matters. The law and governmental responsibility will develop either in a haphazard way without an adequate study of the problems. We feel that the problems are difficult and important beyond the scope of this investigation, and therefore make the foregoing recommendation.

WILLIAM H. DAVIS,
Chairman.
WILLIAM M. LEISERSON,
EVANS CLARK,
Executive Secretary.
JOHN W. WINANT,
ALFRED L. BERNHEIM,
Research Director.
SUMNER H. SLICHTER,
WILLIAM L. CHENERY,
HENRY S. DENNISON.
WILLIAM M. LEISERSON.

The CHAIRMAN. I notice in your statement you released to the press you stated the main purposes of the Wagner labor relations bill included the majority rule. You have discussed that majority rule in the bill, I assume?

Mr. DAVIS. Yes, sir. That is specifically discussed in these findings and recommendations, and since we agreed with the Senator we had nothing to say on it except to put it in.

The CHAIRMAN. So your views on that are contained in the transcript we have just put in the record?

Mr. DAVIS. Yes, sir.

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STATEMENT OF ROBERT M. BUCK, VICE PRESIDENT OF THE AMERICAN NEWSPAPER GUILD FOR REGION 13, WASHINGTON, D. C.

The CHAIRMAN. Your full name is Robert M. Buck?

Mr. BUCK. Yes, sir.

The CHAIRMAN. What is your occupation?

Mr. BUCK. I am vice president of the American Newspaper Guild for region 13, which comprises the District of Columbia.

I am not a salaried officer of the Guild, but I am a reporter in Washington working daily for salary.

The Guild has 10,000 members in the United States organized since December 1933, out of a potential 25,000, covering 125 cities in 30 States.

In Washington we have approximately 400 members. They are the reporters, the correspondents, editorial writers, columnists, copy editors, photographers, artists—the men who first handle the raw material which goes through the factories in our industry. We did not expect the publishers were coming here to oppose this bill. I heard Mr. Harvey J. Kelly's testimony in their behalf on Friday. We resent Mr. Kelly's appearance as a representative of the newspaper industry for the purpose of protesting against this bill, on two counts.

First, we do not admit that the newspaper industry is opposed to this bill. We are a part of the newspaper industry and we do not oppose it. After we have finished handling the raw material in our industry it goes to the printing trades who next fashion it, and I am not informed that they are opposed to this bill.

When the papers get out on the street they are circulated by large armies of men not affiliated with us, and they are a part of the industry. I am not told they are opposed to the bill.

Two-thirds of the revenue of the newspapers comes from advertising, and the advertising is taken in and accounted for by another large army of persons, who have not found themselves able without such a bill as this, to organize and bargain collectively, and they are a part of the industry. I am not informed they are against the bill.

The publishers are not all of this industry, and the working newspaper men organized newly as they are, bitterly resent the attitude of the National Recovery Administration that always speaks of the industry as the employers.

A year ago we supported this bill, and based on 12 months' bitter experience we now do so more emphatically than ever.

In this week's Editor and Publisher, which is an organ of the publishers, there is a leading article and an editorial calling for refusal by the publishers to assent to a continuance of their code after June 16 of this year when it expires; but, Mr. J. David Stern, publisher of the New York Post, the Philadelphia Record, and the Camden (N. J.) Courier and Post, subscribing to that sentiment says:

> Our newspapers are opposed to continuation of codes in all industry, except for provisions covering minimum wages and maximum hours. If the Wagner bill is passed by Congress as it should be, then it is no longer necessary to maintain any code.

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I do not know how many publishers agree with Mr. Stern, but there is at least one who does not subscribe to the sentiment expressed by Mr. Kelly on Friday.

We agree with Mr. Stern. If this bill is enacted we do not need a code, and God knows we do not want one; it has bothered us long enough.

That is the first count on which we resent Mr. Kelly's representation of the industry here. We do not resent his appearing and stating his personal view.

The second count is that he is not a member of the newspaper industry. He is a member of the labor fighting industry, just like Mr. Emery of the National Manufacturers' Association. He is an employee, not of any newspaper, but of an organization of newspapers for the purpose of resisting labor. As chairman of the Special Planning Committee of the American Newspapers Publishers Association he is that association's gladiator, resisting labor's demand for those members having contractual relations with the mechanical trades union.

He said, in his testimony, quoting from his statement, that his association has " a well-developed equality of bargaining power with labor." I shall not pause to comment on the equality in general of the bargaining power of our powerful employers with ourselves, but I wish to point out that he did not tell you this association also maintains an open-shop division headed by another like himself who is charged with the prevention of collective bargaining of the several hundred papers which do not recognize organizations even in the mechanical trades.

All but a handful of the 1,910 daily papers in the United States refuse to recognize us, the Organized Workers of the News Department, and Mr. Kelly is one of the generalissimi who formulate militant tactics in the publishers' campaign to defeat our efforts of collective bargaining.

On Friday I heard Senator Wagner ask Mr. Kelly for a copy of a pamphlet of such tactics that was sent out secretly. Although Mr. Kelly said it was not secret, it went to his members and did not go to anybody else. It was secret except for his members, telling them how to circumvent the Guild in its efforts at collective bargaining.

This pamphlet was revealed in a hearing before the Newspaper Industrial Board at one of our Guild cases in Boston last week. Mr. Kelly said, if I remember his testimony correctly, that he did not know which document Senator Wagner referred to. That is incomprehensible to me. He was present in Boston at the meeting of the Board, as the chairman of the Board, if you please, when that document was most unwillingly wrung from him and read into the record. It was the only document that could fit that description, that the name Boston could currently apply to, yet he told this committee he did not know which document it was.

Although that document was read into the record several days ago, I have been unable to get a copy of it yet.

The CHAIRMAN. You mean in the record in Boston?

Mr. BUCK. Yes, sir. I telephoned our headquarters in New York on Friday to get it for the committee, since Mr. Kelly would not submit it. They had not received it at the Guild in New York, and

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had not received a copy of the transcript of the Boston proceedings, although it is several days since the proceedings were had. They telephoned in turn, to Boston, and the Boston Guild had not received its transcript.

Then, Mr. Jonathan Eddy, our national secretary, wired to Mr. Kelly in Chicago as follows:

> Boston Guild has not received transcript of hearing as ordered. This office has not received transcript text of exhibit 13 as ordered. Please send extra copy of latter to Robert Buck, Washington. Please advise me by wire when we may expect to receive our transcripts.

Mr. Kelly advised that they would be mailed, presumably from Chicago, Monday or Tuesday; so if I receive a copy of it before this record is closed, I will see that this committee gets it.

The CHAIRMAN. We will be pleased to have it in the record. What was the Boston case?

Mr. BUCK. The Boston case was the case of the Boston Herald-Traveler refusing to bargain collectively with the Guild, during which refusal, the publisher of the Herald-Traveler discharged two of our members for union activities.

The CHAIRMAN. This hearing was for the purpose of reinstating them?

Mr. BUCK. No; it was for the purpose of setting up the right of the Guild to collectively bargain.

My chief purpose in reading the telegram from Mr. Eddy to Mr. Kelly was to point out that this was exhibit 13, and from a telegram Mr. Kelly had no difficulty in recognizing the document called for, and telegraphing back concerning it.

The American Newspaper Publishers Association did not come here with clean hands to discuss this effort toward industrial peace. It does not want industrial peace except on its own terms. It submits to collective bargaining only when compelled to do so.

We deem ourselves qualified by our experience to speak of the necessity for such a board as this bill will set up for our industry. We do not doubt that Congress will extend the National Industrial Recovery Act, but even if it does, we may not enjoy such protection as the code affords after June 16, as I have stated.

The American Newspaper Publishers Association meets in New York in convention April 22 to April 26. Their determination is to prevent the continuation of the code after June 16. The association has invited numbers of publishers not now members of it, and who have signed the code, to meet with the association, and they have started the ball rolling with a ballyhoo.

In this connection, I would like to read what Col. Robert R. McCormick, publisher of the Chicago Tribune, says, as follows:

> It seems to me that one strong organization is the best defense for newspapers in defending the freedom of the press against bureaucratic encroachment. A number of weak organizations would be likely to fall before the assault.

So it would seem they are not only going to discuss the discontinuance of the code, but more militant matters.

This organ, Editor and Publisher, also has an editorial advocating the end of the code, and enters as one objection to it, quoting the editorial, that:

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It (the code) has given rise to the organization of a radical labor union among a minority of editorial workers—a union which is also a misfit and is calculated to be the instrument of class-conscious propagandists out to disrupt the independent press.

The editorial intimates that if the code ends this union will lapse into the innocuous desuetude of a professional society.

That is not editorial rhetoric. I have written editorials, and I recognize mere rhetoric when I see it.

It means that, with the code out of the way, the working newspaper men who write the news and take the photographs and prepare both for publication, are faced with a war for extinction of their organization unless this bill is enacted.

The publishers want this war. We do not. We want peace, and therefore we want this bill. But if they insist upon it they will get a war that will make their heads swim.

For generations we have been enslaved, being required to deal individually with our employers, but with section 7 (a) of the Industrial Recovery Act in our code, it has enabled us to organize for mutual collective bargaining purposes with perhaps greater speed than we might otherwise have done. But it is only a part of a code and we are about to lose it, even at that. This bill would make it a law.

Even if the code is renewed our industry needs this legislation. The publishers are business men. They are like all employers. Some of them are just, while others misuse their peculiar opportunities for tyranny.

An example of the latter is William Randolph Hearst. From two of his papers guild officers have been fired for union activity. He has expressed opposition to the guild in public statements.

Why is he fighting us? Perhaps the reason may be found in the guild's code of ethics adopted at its last convention. I will read it.

(1) That the newspaperman's first duty is to give the public accurate and unbiased news reports, and that he be guided, in his contacts with the public, by a decent respect for the rights of individuals and groups.

(2) That the equality of all men before the law should be observed by the men of the press; that they should not be swayed in news reporting by political, economic, social, racial, or religious prejudices, but should be guided only by fact and fairness.

(3) That newspapermen should presume persons accused of crime of being innocent until they are convicted, as is the case under the law, and that news accounts dealing with accused persons should be in such form as not to mislead or prejudice the reading public.

(4) That the guild should work through efforts of its members, or by agreement with editors and publishers, to curb the suppression of legitimate news concerning "privileged" persons or groups, including advertisers, commercial powers, and friends of newspapermen.

(5) That newspapermen shall refuse to reveal confidence or disclose sources of confidential information in court or before other judicial or investigating bodies; and that the newspaperman's duty to keep confidences shall include those he shared with one employer even after he has changed his employment.

(6) That the news be edited exclusively in the editorial rooms instead of in the business office of the daily newspaper.

(7) That newspapermen shall behave in a manner indicating independence and decent self-respect in the city room as well as outside, and shall avoid any demeanor that might be interpreted as a desire to curry favor with any person.

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To that code of ethics the convention added a condemnation as follows:

(1) The carrying of publicity in the news columns in the guise of news matter.

(2) The current practice of requiring the procuring or writing of stories which newspapermen know are false or misleading and which work oppression or wrong to persons and to groups.

Senator MURPHY. Do I understand that code of ethics is put out as an argument against the guild?

Mr. BUCK. No; that is our own code of ethics.

Senator MURPHY. What has Mr. Hearst to do with that?

Mr. BUCK. Mr. Hearst opposed the guild which promulgates that code of ethics.

Senator CLARK. As I understand, that requires that they tell the truth?

Mr. BUCK. Yes, sir; that is it, Senator.

In the spring of 1914 at Niagara Falls, Canada, a peace conference was held between representatives of the United States and Mexico; and, because of his propaganda, Mr. Hearst's reporters were persona non grata. The New York American sent Roscoe Conklin Mitchell, a reporter of perfect integrity, because he had the confidence of the State Department. He got into the confidence of the conferees.

In one of his news dispatches, without his knowledge, in the office, in New York, of the American, was interpolated a fake message represented to have been sent by President Carranza of Mexico to the Mexican mediators.

Mitchell promptly resigned, and his managing editor, Bradford Merrill sent him the following telegram, which I will read from Harper's Weekly of July 25, 1914, which I found by accident in my files.

The telegram reads:

ROSCOE C. MITCHELL,
Clifton Hotel, Ga.

Come home comfortably. Be philosophical. Mr. Hearst sent Johnson. No reflection on you. Good soldiers are patient even if superior officers make mistakes. Be resigned without resigning.

MERRILL.

Merrill was managing editor of the American. That was 20 years ago. Hearst has had time to change since that.

In the winter of 1927 and 1928, to refer to something you gentlemen are familiar with, the Hearst newspapers published a number of forged documents purporting to show that four United States Senators had been paid Mexican money to influence their attitude on Mexican-American relations. The Senate investigated and reported the documents to be forgeries. Before the Senate committee investigating it Hearst admitted that the spurious documents had been printed without giving the Senators opportunity to reply, and his own handwriting experts at that hearing pronounced the documents forgeries.

He was sued for libel by Ernest Gruening, a newspaperman, and settled out of court for $75,000.

Mr. Hearst has an interview in the current issue of Editor and Publisher in which he says:

I believe that newspapers should be let alone to do their duty to the public in their own way as they have always faithfully done—

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As witness the Merrill telegram to Mr. Mitchell.

He continues further:

I believe that other industries should be let alone and that the country should be allowed to recover without constant harassment from a lot of incompetent interfering politicians, who know nothing about business, who never had to meet a pay roll or pay for equipment, or pay interest and dividends, or do any sort of hard and intelligent work on behalf of their institution and their investors and the public.

I do not think there should be any new N. R. A.

The old one was a disastrous failure.

It died a dismal death and should be buried deep and allowed to lie unmourned, unhonored, and unsung, and certainly unresurrected.

If this meddling Government of ours would only mind its own legitimate affairs and keep its interfering and infected finger out of the eye of industry, we would all be able to enjoy not only prosperity but life, liberty, and pursuit of happiness—the forgotten ideals of American independence and individualism.

During the preparation of the hearing on wages and hours for the newspaper workers in connection with the newspaper code, the Bureau of Labor Statistics investigated conditions on a number of newspapers, and the Hearst and Scripps-Howard syndicates refused access to their pay rolls to the Government agents for the purpose of this investigation, and Colonel McCormick, publisher of the Chicago Tribune, ordered the agent personally to leave those premises.

Our code is the only one of its kind. It is called an assent code down at the N. R. A. No publisher is bound to sign it. Seven hundred publishers, more than one-third of the daily newspaper publishers in the country, have not signed the code, and are not therefore bound by it, or section 7 (a).

Their employees at this moment are in dire need of this legislation. The rest of us need it also for, despite the fact 7 (a) is a section of the code, all but a few of these 1,200 assenting publishers refuse to recognize our organization, although in the main they have not yet sought to destroy it. Some have done even that.

On April 4, 1934, the San Francisco Examiner, a Hearst paper, started the ball rolling by firing Louis Burgess for guild activity. He is still fired.

Later on in the same month two guild members were fired for organizing in New Bedford, Mass., and they have not been reinstated.

In June, Dean Jennings was fired from the San Francisco Bulletin, also a Hearst paper, because he used his vacation to attend the national guild convention, and he is still out.

In July, S. I. Newhouse, publisher of the Long Island Daily Press, threatened to discharge nine guild members and thereby temporarily disrupted that chapter of the guild. It was later revived, but he raised the pay $7.50 per week to those who would sign individual agreements, but refused to increase the guild members who refused to sign his yellow-dog contract.

He subsequently signed an agreement to enter into a guild contract on October 1, but when that date came he refused to do it. We have appealed to the Newspaper Industrial Board to see whether his signature on the other agreement meant anything or not. I think it has not been reached yet.

On July 28, Mr. Newhouse fired Alexander Crosby from the Staten Island Advance, another paper he owned, for union activities, and Crosby is still out.

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On September 28, Alphonse Tonietti was fired from Il Progresso, an Italian-language newspaper in New York. His is the only case we won before the Industrial Board, set up under the code; but after he was reinstated his employer drove him out of New York where his home was by transferring him to another newspaper he owned in Philadelphia. So it was a bitter victory.

In November, Joseph R. Nolan, publisher of the Oakland (Calif.) Tribune, fired three members of the guild for presuming to undertake collective bargaining, and those two are still out.

And on November 9, Lucius Tarquinius Russell, publisher of the Newark (N. J.) Leader fired eight guild members and threatened to fire more of them when the guild asked him to negotiate. In so doing, he plunged his newspaper into bankruptcy during the 20 weeks' strike which ensued, and which ended last Thursday in a complete victory for the guild; that is to say, it will be a complete victory, if our members are now able to rescue his paper from the consequences of his folly.

Not counting Newark, there have been 10 martyrs to the determination of feudal publishers to defy 7 (a) and to smash our organization, despite the fact that they are signatories to the code which guarantees us the right to organize and bargain collectively. These are the gentlemen for whom Mr. Kelly spoke last week.

Why are these nine men still without their jobs, the nine who have not got their jobs back yet, and why is Mr. Tonietti living apart from his wife without being divorced from her because she has a job in New York and he has been shifted to Philadelphia?

Because of the utter failure of the Newspaper Industrial Board, which Mr. Kelly heads, or of the National Recovery Administration to protect our plain right to organize and collectively bargain, as guaranteed in the law and the newspaper code.

We are not opposed to bipartite boards to arbitrate working conditions on papers with which we have collective agreements, but such boards, and that includes the Newspaper Industrial Board, cannot function to preserve for workers those rights which are anterior to such an agreement.

It is idle to take time here to state in detail why the Newspaper Industrial Board is a failure. Mr. Kelly has admitted it even while denying it. After a year of existence it has not even completed the panel of five impartial chairmen required by the code. Its members cannot agree even on the terms of submission of disputes to the one impartial chairman they have.

I shall not haggle with Mr. Kelly or his associates whether the failure to agree is theirs or ours. In the very nature of the set-up, such a board cannot decide questions of alleged discrimination in violation of our right to organize. The published members will not yield that right, and we will not surrender it. Of course we can not agree.

In the one case the board decided in our favor, the Tonietti case, it gave the employee 7 weeks' back pay, and did him out of 4 more weeks' back pay that he was entitled to, and then refused to entertain a complaint after the employer had shipped him to Philadelphia from New York, as I have stated.

Mr. Kelly admitted in this presence that his board has no power to enforce its awards. He also admitted that some complaints have

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been pending before it for a year. He said out of 40 complaints the board had settled 25. Such is not the case. There have been 39 cases and only 8 have been settled. Eighteen are still pending. Thirteen have been crossed off of the docket because the labor members deemed it more advisable to withdraw them than to try to get justice. Even if a discharged employee finally wins a case, he has been without means of life for months. Such a board is worse than worthless. It is vicious.

In view of these considerations it is obvious that our industry needs this legislation which will abolish company unions, make 7 (a) a law instead of a mere section in a will-o'-the-wisp code, and which will set up a board entirely outside of the industries to enforce it.

We want this legislation. The publishers need it. They have compelled us to proceed in haste to organize with sufficient strength to be able, although reluctantly, to strike when necessary, as we did in Newark, where we demonstrated that we can.

The board to be set up under this bill, when enacted, must not only be independent of the industries. To be effective it must also be independent of other governmental agencies.

Dean Jennings was fired for guild activity in June, and against hostile pressure we got his case before the National Labor Relations Board, where it belonged, being a 7 (a) case. That Board in December ordered his paper to reinstate Jennings. The executive director of the National Executive Council of the United States, and the general counsel for the N. R. A., entered objections and demanded that the case be reopened.

These two men, Government officials, argued, as counsel for the publishers had done before them, that the National Labor Relations Board had no jurisdiction.

The Board heard their arguments, retained jurisdiction, and a second time decided the case in our favor. Mr. Richberg then appealed to the President, who, to reverse the Jennings' decision, stripped the National Labor Relations Board of virtually all its powers in all cases, and wiped out our double victory.

After such a demonstration of our employers' power we have no place to which to appeal but to Congress, and now, through you, we ask Congress to restore the National Labor Relations Board to independence, increase its power, and make it impossible for such a thing as happened to us in the Jennings case to happen again.

There remains to discuss but one thing more. Mr. Kelly said he was not prejudiced against labor. In the next breath he said labor had failed to purge itself of racketeering.

I have been in the newspaper business for 30 years. I was born and raised in Chicago, and was once a member of the city council of Chicago. The newspaper-publishing business in Chicago is my home industry. I had to blush with shame, Friday, when Mr. Kelly spoke of labor racketeering, because pictures came up before my mind of murder on the streets of my town, the town of which later I was one of the city fathers; bloodshed caused, the first time it came to my personal attention, by a newspaper circulation war. In the year 1907, when the Hearst papers, then recently installed in Chicago, undertook to grapple with the other papers for circulation advantage, both groups of newspapers imported from all of the hell holes of the United States, criminals—thugs and gunmen—and

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turned them loose upon our streets to murder and to pillage. They never went away, but remained to form the basis for the things that later happened in Chicago under prohibition. We ask you, gentlemen, to do all you can to enact this legislation.

(The statement previously referred to by Mr. Buck follows:)

(Attached is copy of certain portion of Bulletin No. 6305, New York, July 27, 1934, published by the American Newspaper Publishers' Association, and entered as exhibit no. 13 in the hearing of the *Boston Newspaper Guild* v. *Boston Herald-Traveler Corporation* before the Newspaper Industrial Board, Mar. 18–20, 1935, Boston, Mass.)

Mr. ROBERT BUCK,
Room 501, District Building, Washington, D. C.

Furnished at the request of Mr. Jonathan Eddy.

V. G. HANCHER.

AMERICAN NEWSPAPER PUBLISHERS' ASSOCIATION,
L. B. PALMER, GENERAL MANAGER,
370 Lexington Avenue, New York, N. Y., July 27, 1934.

[Bulletin no. 6305]

"B" Special Daily Newspaper Code—Closed shop contracts demanded by newspaper guild

The American Newspaper Guild is approaching various publishers and demanding closed-shop contracts in respect of their news departments. Publishers have inquired of this office as to what they should do under the circumstances.

Section 7 (a) of the National Industrial Recovery Act does not require publishers who have subscribed to the Daily Newspaper Code to enter into any contract calling for a closed shop. While the law gives to all employees the right to bargain collectively, free from restraint of or interference by employers, it does not make such bargaining compulsory on those employees who do not desire to join in. Neither does it compel a contract to be entered into by the employer as a result of such bargaining.

The law merely provides a method for employees who desire to do so voluntarily to cooperate with one another in the matter of collective bargaining with their employers. It does not compel organization or unionization of all employees; it does not require contracts to be entered into; and it would be violated if an employer entered into a contract which denied a place on his staff to a man who preferred to continue in the future as he has continued in the past in his individual capacity as an employee.

It is very important that publishers, in their negotiations with the guild, should keep certain facts in mind.

Article III, section 1, of the daily newspaper code, authorized the code authority "to secure the necessary data and to determine the maximum hours and minimum wages for news department workers, and subject to the approval of the administrator to incorporate its findings in the provisions of this code."

The code further provides that "until such time as its findings are made a part of this code present conditions shall be maintained."

The present conditions referred to are those which existed on the effective date of the code—March 12, 1934.

The President, in his Executive order approving the code, required that the determination provided for, as above mentioned, should be made within 60 days or prior to May 12. Every step has been taken by the code authority of the daily newspaper publishing business to make this determination, but the determination itself has been held in the abeyance because the American Newspaper Guild has requested the N. R. A. to hold a public hearing on the recommendation of the code authority, and on each occasion when the N. R. A. has attempted to set a date for that hearing, the guild has not been ready. Its latest request for a postponement asked that the date be deferred until sometime after the 1st of October.

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Both publishers and their news department employees should be advised that the American Newspaper Guild has made impossible, by its dilatory tactics, the carrying out of this code provision, as requested by the President within 60 days of the effective date of the code or within any other period of time up to date.

Another fact is that if publishers have adhered to the code by maintaining the conditions which existed in their news departments as of March 12, there is no question under the code for them to discuss with their employees, insofar as their news departments are concerned. However, because of the provision of section 7 (a) of the act, where publishers are satisfied that their news department employees or some of their employees are members of the guild, and a request is received for a conference with the guild, that request should be granted. Negotiations should not be declined, even though contracts are declined. On the other hand, the guild should be emphatically informed that until the determination provided for in article III, section 1, is made, there is nothing to discuss unless the guild has evidence of some violation of the code.

Another question which has been raised by publishers is whether or not publishers may act jointly in a city where there is more than one newspaper in their negotiations and bargaining with the guild. Of course, publishers may act jointly if they so desire, but unless they agree to act jointly, then the Guild cannot compel a publisher's organization, set up for other purposes, to treat with it as an organization.

Still another question is how publishers may proceed to ascertain if the guild does represent their employees. No objection can be raised if a publisher makes inquiry of his employees as to whether not not they belong to the guild as long as he does not intimidate them or use any force to restrain them from membership if they desire to join. If a controversy should arise between the guild and a publisher as to the guild's claims of representation, article VI, section 5 (e) of the code provides that that controversy shall be determined by the Newspaper Industrial Board.

The important thing, however, is that the guild has no ground for controversy with any publisher if the latter's news department is being conducted on the same basis as existed on March 12 last.

BRIEFS

ASSOCIATION OF EMPLOYEES,
AMERICAN TELEPHONE & TELEGRAPH CO.,
New York, March 22, 1935.

Hon. DAVID I. WALSH,
Chairman Committee on Labor,
United States Senate, Washington, D. C.

DEAR SENATOR: We understand that the bill S. 1958, entitled "National Labor Relations Act", will be reported out of committee within a few days. We desire, therefore, to present as briefly as possible, for your consideration, our views on this proposed legislation.

Section 8, paragraph 2, page 8, of this bill will, if passed, especially prohibit an employer from contributing financial or other material support to an association of employees. This means that an employer cannot compensate any employee for services performed in behalf of employees' association work or by any other means whatsoever.

The Association of Employees, Long Lines Department, American Telephone & Telegraph Co., was formed December 31, 1929, by employee representatives chosen by the employees, and is now composed of approximately 10,000 employees, of which this body, General Office Council, represents about 900. It has been, from time to time, constitutionally developed and strengthened at our own initiative to more effectively serve the employees. We feel that our organization meets our needs and we do not wish to see enacted any legislation that would interfere with our method of handling our problems. However, membership in this association does not in any way conflict with the right of any employee to be or to become a member of any other association or organization.

Association members are responsible only to the association for their acts in connection with the functioning of the association and are excused without loss of pay to perform their association duties. Management people (roughly defined

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as those having the right to hire and fire) are not permitted membership and are barred from attending or participating in any of the elections or business meetings. Membership in the association has never been a condition of employment nor has any attempt been made on the part of the management to influence any election of officers or representatives.

The association annually negotiates with the management a budget covering the succeeding year's association expense and we are solely responsible for the administration of our expenditures. We do not believe that financial support by the management has of itself any subversive effect on the functioning of our association or the members of our association. The controlling effect of such support could be brought to bear if we had to obtain the management's approval for expenditures on each action we desired to take as the need of such action presented itself. With a prior agreement covering expenditures, this controlling effect is eliminated.

It is our opinion, based on our experience, that an employer can financially support an employee organization without violating any of the other provisions in the bill. We, therefore, recommend that paragraph 2, of section 8 page 8, of this bill be changed to read as follows:

"To contribute financial or other material support to any labor organization, by compensating anyone for service performed in behalf of any labor organization, or by any other means whatsoever, except that it shall not be an unfair labor practice for any employer or anyone acting in his interest to contribute such financial or material support provided that an agreement is made between the employer and the labor organization covering such material support by the employer for a definite period of not less than 1 year subsequent to the date of making the agreement."

For the past 15 years we have constantly improved our standard of living, have settled our cases peacefully, and have been a real asset to ourselves, to the industry, and to the Nation. We have the necessary ability within ourselves to handle our problems and have the intelligence to decide for ourselves the type of organization we want for collective bargaining. We have no feeling of asking for a paternalistic favor when negotiating our annual expense budget with the management and handle that detail with the same freedom as any other case furthering our interest.

Our records seem to justify that those responsible for the guidance of our country give careful consideration to our suggestions before eliminating such organizations as ours from their very evident field of usefulness, and we ask a continuation of our right to make for ourselves those decisions affecting us as do those matters covered by this bill.

Respectfully,

GENERAL OFFICE COUNCIL,
G. O. BAILEY, *Chairman.*

ASSOCIATION OF EMPLOYEES,
AMERICAN TELEPHONE & TELEGRAPH CO.,
New York, March 27, 1935.

Hon. DAVID I. WALSH,
Chairman Committee on Labor, United States Senate,
Washington, D. C.

DEAR MR. WALSH: We understand that the bill S. 1958, entitled "National Labor Relations Act", will be reported out of committee within a few days. We desire, therefore, to present as briefly as possible, for your consideration, our views on this proposed legislation.

Section 8, paragraph 2, page 8, of this bill will, if passed, especially prohibit an employer from contributing financial or other material support to an association of employees. This means that an employer cannot compensate any employee for services performed in behalf of employees' association work or by any other means whatsoever.

On December 31, 1919, the association of employees, long-lines department, American Telephone & Telegraph Co., was formed, the purpose of which was to facilitate dealings between the management of this company and its employees. The members of this assocaition are responsible only to the association for their acts in connection with the functioning of the association and are excused by the management, without loss of pay, to perform their association duties. By the management is meant the people who have the power to employ or discharge. These persons are not permitted membership and are barred from attending or participating in any of the elections or business meetings.

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The association annually negotiates with the management a budget covering the succeeding year's association expense and it is solely responsible for the administration of all expenditures. We do not believe that the financial support furnished by the management has of itself any subversive effect on the functioning of our association or the members of our association.

It is our opinion, based on our experience, that an employer can financially support an employees' organization without violating any of the other provisions in the bill. We, therefore, recommend that paragraph 2 of section 8, page 8, of this bill be changed to read as follows:

"To contribute financial or other material support to any labor organization, by compensating anyone for service performed in behalf of any labor organization, or by any other means whatsoever; except that it shall not be an unfair labor practice for any employer or anyone acting in his interest to contribute such financial or material support provided that an agreement is made between the employer and the labor organization covering such material support by the employer for a definite period of not less than 1 year subsequent to the date of making the agreement."

For the past 15 years we have constantly improved our standard of living, have settled our cases peacefully and have been a real asset to ourselves, to the industry and to the Nation. We have the necessary ability within ourselves to handle our problems and have the intelligence to decide for ourselves the type of organization we want for collective bargaining. We have no feeling of asking for a paternalistic favor when negotiating our annual expense budget with the management and handle that detail with the same freedom as any other case furthering our interest.

Our records seem to justify that those responsible for the guidance of our country give careful consideration to our suggestions before eliminating such organizations as ours from their very evident field of usefulness, and we ask a continuation of our right to make for ourselves those decisions affecting us as do those matters covered by this bill.

Respectfully,

F. J. CARTER,
Chairman of Executive Committee.

THE TRI-STATE TELEPHONE & TELEGRAPH CO. EMPLOYEE ASSOCIATION,
St. Paul, Minn., March 27, 1935.

Hon. DAVID I. WALSH,
Chairman Committee on Education and Labor,
United States Senate, Washington, D. C.

DEAR SIR: We, the undersigned, are duly elected chairmen of committees representing the entire employee body of the Tri-State Telephone & Telegraph Co., headquarters St. Paul, Minn., which body consists of 1,948 employees.

The Wagner industrial disputes bill, Senate 1958, has been reviewed in its entirety by our committees and we have been instructed by the employees so represented to petition your committee to reject this bill in committee, for the following reasons:

1. We, at present, are functioning under a written form of employee representation which was initiated and drawn up by elected representatives of the employee body. This plan and an agreement prepared by these representatives were submitted to the employer for concurrence. The agreement was accepted and signed by the employer after which it and the plan were submitted and accepted by the entire employee body voting by secret ballot, the vote being tabulated and certified to by certified public accountants. This form of organization has been in effect for a period of 1 year and has proved itself entirely satisfactory to the employee body.

2. The provisions of the National Labor Relations Act will make it impossible for us to continue our present form of organization which we feel has resulted in satisfactory relations between employees and employer.

Respectfully submitted.

L. O. WRIGHT, *Chairman.*
S. P. STONGAARD.
A. A. RYAN.
CELESTINE MCGLYNN.
C. E. BRINEY.

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MINNEAPOLIS, MINN., *March 27, 1935.*

Hon. DAVID I. WALSH,
Chairman Committee on Education and Labor:

This is to inform you of the opinion of the 230 employees in the Minnesota commercial department, Northwestern Bell Telephone Co., whom we represent, regarding the Wagner labor disputes bill, S. 1958. Our company union has been in existence since April 1932, with slight revisions made in February 1934, and has proved beneficial to the welfare of the employees. All items pertaining to working conditions, wages, or hours of employment have been settled entirely satisfactorily. After careful consideration of the bill we are opposed to it because (1) it provides that it shall be an unfair labor practice for an employer to contribute financially or otherwise support a company union as provided in section 8, subsection 2; (2) it provides vesting in the Board, its agent or agencies, the power of determining what unit will be appropriate for purposes of collective bargaining, section 8, subsection 2, to remove financial support, which we now receive, would limit the inclusiveness of our representation and reduce collective bargaining activities. It would be detrimental to our collective bargaining activities if the Board, its agent or agencies, were to determine the unit of collective bargaining rather than our company union.

MINNESOTA AREA COMMERCIAL REPRESENTATION COMMITTEES,
C. S. KIRK, *Chairman.*

MARCH 30, 1935.

Hon. DAVID I. WALSH,
Chairman Committee on Education and Labor,
United States Senate, Washington, D. C.

DEAR SENATOR WALSH: Enclosed herewith is copy of a letter which I received from R. W. Ayres, chairman employees representation committee, accounting department, Nebraska-South Dakota area, Northwestern Bell Telephone Co., one of my constituents, in which he enters protest to certain parts of the Wagner national labor bill.

Also enclosed is agreement and employees' plan of representation.

I have written my constituents that I am referring the matter to you as chairman of the committee before whom hearings are now being held.

Yours very truly,

CHARLES F. MCLAUGHLIN.

MARCH 28, 1935.

Hon. CHARLES F. MCLAUGHLIN,
House of Representatives, Washington, D. C.

MY DEAR SIR: The representation committee of the employees representation plan of the accounting department in the Nebraska-South Dakota area of the Northwestern Bell Telephone Co. has instructed me as chairman of that body to enter a protest to certain parts of the Wagner national labor relations bill now in hearing before the Senate Committee on Education and Labor. Our committee represents 130 employees all located in Omaha. The specific items to which we object are as follows:

(1) Section 8, paragraph (2) now reads: "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

Our committee feels that this should be modified to the extent that the following words contained in the first sentence be omitted: "Or contribute financial or other support to it."

We object to section 8, paragraph (2), in its present form for the reason that it would seriously hamper the operation of our present plan. We are enclosing a copy of the employees' plan of representation and a copy of the agreement between the management and the accounting employees of the Northwestern Bell Telephone Co., dated March 21, 1934. The plan and agreement were formulated by the employees in accordance with the spirit of section 7 of the National Industrial Recovery Act and were voted on and accepted by 99 percent of the employees of the accounting department and has been working very satisfactorily since its adoption. By reviewing the plan and agreement you will readily see our point of view.

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(2) Section 9, paragraph (b), which reads, "The Board shall decide whether, in order to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit."

We believe that the employees should have the right to set up their own units for collective bargaining without interference from any outside force. We object to section 9, paragraph (b), in its entirety.

We trust you will give these matters your consideration and hope that you will support our cause.

Yours very truly,

R. W. AYRES,
Chairman Employees' Representation Committee.

OMAHA, NEBR.

DAVID I. WALSH,
Chairman of Committee on Education and Labor,
United States Senate, Washington, D. C.

MY DEAR SIR: The representation committee of the employees representation plan of the accounting department in the Nebraska-South Dakota area of the Northwestern Bell Telephone Co. has instructed me as chairman of that body to enter a protest to certain parts of the Wagner national labor relations bill now in hearing before the Senate Committee on Education and Labor. Our committee represents 130 employees all located in Omaha. The specific items to which we object are as follows:

(1) Section 8, paragraph (2), now reads: "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

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We object to section 8, paragraph (2), in its present form for the reason that it would seriously hamper the operation of our present plan. We are enclosing a copy of the employees plan of representation and a copy of the agreement between the management and the accounting employees of the Northwestern Bell Telephone Co., dated March 21, 1934. The plan and agreement were formulated by the employees in accordance with the spirit of section 7 of the National Industrial Recovery Act and were voted on and accepted by 99 percent of the employees of the accounting department and has been working very satisfactorily since its adoption. By reviewing the plan and agreement you will readily see our point of view.

(2) Section 9, paragraph (b), which reads: "The Board shall decide whether, in order to effectuate the policies of this act, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit."

We believe that the employees should have the right to set up their own units for collective bargaining without interference from any outside force. We object to section 9, paragraph (b), in its entirety.

We trust you will give these matters your consideration and hope that you will support our cause.

Very truly yours,

R. W. AYRES,
Chairman Employees Representation Committee,
Accounting Department, Nebraska-South Dakota Area,
Northwestern Bell Telephone Co.

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 1, 1935.

Hon. DAVID I. WALSH,
Chairman Committee on Education and Labor,
United States Senate, Washington, D. C.

DEAR MR. WALSH: Enclosed herewith you will find copy of letter which I have today received from Mr. Anthony Nesladek, chairman Fremont plant

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department employees of the Northwestern Bell Telephone Co., with reference to modifications in the national labor regulations bill.

Inasmuch as this bill is now before the Senate Committee on Education and Labor, of which you are chairman, I am submitting it for your consideration.

Yours very truly,

CHARLES F. MCLAUGHLIN.

FREMONT, NEBR., *March 30, 1935.*

Hon. CHAS. F. MCLAUGHLIN,
House of Representatives, Washington, D. C.

MY DEAR SIR: As chairman of the group of Fremont plant department employees of the Northwestern Bell Telephone Co., all of whom are members of the Telephone Employees' Association, I have been instructed by unanimous vote to request your assistance in obtaining certain modifications in the national labor relations bill now before the Senate Committee on Education and Labor.

It is the consensus of opinion that certain sections of the bill; namely, section 8 (2) and section 9 (b) would completely disrupt our organization unless modified in the following respects:

Section 8 (2) now reads: "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

We request that the words "or contribute financial or other support to it" be stricken from this section.

Section 9 (b) now reads: "The board shall decide whether, in order to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit."

We request that this section be modified to allow employees to choose the type and number of units and that the action by the board be restricted to those cases where employee agreement is impossible.

You will receive under separate cover a copy of the constitution of the Telephone Employees' Association, plant department, Northwestern Bell Telephone Co., together with a copy of the agreement between this association and the Northwestern Bell Telephone Co., from Omaha, Nebr., which we request that you carefully review in order to become familiar with the workings of this type of organization. This constitution and agreement supersede similar ones that have been in effect since 1919, under which we have never experienced coercion or company domination through financial aid or other support contributed from any source.

We invite any investigation you might wish to make regarding our plan, and are hopeful that through your support, the above modifications will be made in the bill in order that our organization and similar ones throughout the Nation will not be disrupted through the passage of this bill.

Yours very truly,

ANTHONY NESLADEK, *Chairman.*

OMAHA, NEBR., *March 26, 1935.*

Hon. DAVID I. WALSH,
Chairman of Committee on Education and Labor,
United States Senate, Washington, D. C.

MY DEAR SIR: As chairman of the group of 300 Omaha plant department employees of the Northwestern Bell Telephone Co., all of whom are members of the Telephone Employees' Association, I have been instructed by unanimous vote to request your assistance in obtaining certain modifications in the national labor relations bill now before the Senate Committee on Education and Labor.

It is the concensus of opinion that certain sections of the bill, namely, section 8 (2) and section 9 (b), would completely disrupt our organization unless modified in the following respects:

Section 8 (2) now reads: "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

We request that the words "or contribute financial or other support to it" be stricken from this section.

Section 9 (b) now reads: "The board shall decide whether, in order to effectuate the policies of this act, the unit appropriate for the purposes of

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We invite any investigation you might wish to make regarding our plan, and are hopeful that through your support, the above modifications will be made in the bill in order that our organization and similar ones throughout the Nation will not be disrupted through the passage of this bill.

Yours very truly,

H. S. MORRISSEY, *Chairman.*

A BRIEF ON BEHALF OF THE AMERICAN ASSOCIATION CREAMERY BUTTER MANUFACTURERS

APRIL 5, 1935.

To the Members of the Senate Committee on Education and Labor:

I beg to submit the brief which follows in opposition to the Wagner labor bill now before your committee on behalf of the American Association Creamery Butter Manufacturers. This organization is made up of manufacturers of butter and allied products. Its members produce upwards of 600,000,000 pounds of butter each year and also act as the sales representatives of other butter manufacturers who are not members of this association, so that the total business in marketing butter amounts to over 900,000,000 pounds of butter a year, or more than one-half of the creamery butter produced in the United States.

Butter plants numbering upwards of 5,000 and located in every State in the United States will be subject to labor conditions which will be brought about if this act is passed by Congress and the members of this association believe that such induced conditions will be extremely dangerous and harmful not only to the interests of the manufacturers of butter, but to every dairy farmer and producer of milk and butterfat in the United States. We earnestly request an adverse vote by your committee on this measure.

I wish to call to the attention of your committee as briefly as possible the dangers which we see in this measure of agriculture and to the butter manufacturing industry and all other industries similarly situated.

I first wish to consider two points. The first is what it proposes, and some of the dangerous details included. Second, its dangerous effect on the men and women who are engaged in agriculture.

You will want to know at the beginning what business it is of farmers or their organizations whether or not a national labor board is created, and why we should interest ourselves in labor matters and industrial disputes.

My answer is that this is just as much the business of those engaged in agriculture as it is the business of labor to take part in governmental questions affecing agriculture and its products. These are questions of national policy not to be settled on a class basis. Agriculture furnishes the largest group of customers for the products of labor. Labor makes up the largest group of customers for the products of agriculture. A policy good for one and not the other will ultimately be bad for both.

The policy written into this bill of Federal control of labor relations through a political board may be good for labor, but I doubt even this. It certainly is not good for agriculture.

The bill is long. It is intricate. It is subject to many interpretations. It changes fundamental existing law. It will create a long period of uncertainty which will inevitably breed more strikes and more industrial disputes rather than end or settle them.

Ostensibly designed to provide a way to settle disputes this bill goes far beyond this objective. It goes directly to the objective of a Federally con-

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trolled, almost mandatory, unionization of industry. This as everyone, either friend or foe, knows is equivalent to Federally protected high prices for labor.

The heart of this bill is in the definitions found in section 2, the provisions of section 8, defining unfair labor practices, and section 10, giving wide authority to the board, to correct such unfair practices. A board of three persons paid $10,000 per year administers the act, and is given wider powers than ever found in any previous labor legislation.

In the section on definitions we find that an employer is "any person acting in the interest of an employer directly or indirectly." Agricultural workers are exempt but a farmer employer is not. While the instrumentalities of government and labor unions are exempted, cooperative organizations of farmers are not exempt. Units employing less than 10 employees are also exempted and this creates a bad discrimination. The small employer is not subject to the act while the larger employer is, and the small store is exempt while the larger or multiple stores come within the ban.

In calling attention to these and other details, I wish it to be plain that these details which might be corrected are not the chief danger. The danger is from the false principle that the Federal Government can or should interpose a bureaucratic political authority upon the problem of employment relations.

The good offices now provided by law to adjust labor troubles by the boards, of conciliation and mediation, Federal or State, when there is mutual labor-employer request for such service provide a sane method of handling this problem. The Wagner bill if passed substitutes a permanent control—arbitrary and autocratic—by a politically appointed board.

While this bill defines certain "unfair labor practices", objection lies very emphatically to the assumption that in a Federal authority of this kind will be found the best way to interpret or apply these definitions; and even more emphatically that the way to end unfair practices lies in the application of an autocratic application of Federal authority.

Still further emphatic protest lies against the principle found in the third paragraph of section 8, in which is found the definite approval of the principle of a closed shop. It says "nothing in this act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712, as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization * * * to require as a condition of employment membership therein, if such labor organization is the representative of the majority of the employees in the appropriate collective bargaining unit covered by such agreement when made." This is a reversal of existing law, a direct invalidation of section 7 (a) of the National Recovery Act.

If we concede, which I do not, that any law of this type is needed or in accord with national policy, then this act is certainly to be criticized because:

1 It establishes a permanent political organization to impose the closed shop in large and small industries.

2. It provides for no protection to the individual worker who wishes to stay outside a union—to the contrary, it distinctly authorizes coercion, the refusal of employment—unless he joins a union.

3. It does not provide for adequate representation to organized minority in any kind of an organization nor to any consideration for the worker who has no desire to join any organization.

4. It makes sure that every plant will be organized in some way.

I would like to say that after thus denying rights of individuals and minorities and practically assuring unionization of all industries, the bill provides the Board with extraordinary powers of enforcing its decisions.

I will pass over any discussion as to the validity or the legal aspects of this particular policy. We have in the Railway Labor Act and the Rail Labor Board an illustration of this type of legislation. We all know how it has operated as a bar to the reduction of railroad costs of operation and as a major factor in the national dilemma of the railroads and in the high freight rates which are a bar to improvement of farmers' conditions.

Now what is the direct application of this Wagner bill to agriculture?

First, in those plants and enterprises engaged in preparing for market and marketing farm products, our milk, cream, and butter; grain, flour, and feed; fruits and vegetables, either fresh or canned; livestock, meat, lard, wool, and hides; cotton (the gins or oil mills) or tobacco in warehouse or factory, a new era of unionized labor will increase every cost. These products are

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sold in an abundantly supplied (consumers') market and their prices cannot be arbitrarily advanced. Who, then, will pay the increased cost of processing and distributing? Of course, the same individuals who pay the high freight rates due to the railway labor law—the farmer producers. This is blow number one to agriculture.

This bill if passed will tend to unionize in some way every creamery employing more than 10 persons, every milk plant, the delivery of every dairy product, every cannery, every apple-packing plant, flour mill, tobacco warehouse, cotton gin. Probably it will unionize all of them, large or small. The farmer will pay the bill in a reduction in the amount of his return payment for his products as sold or delivered.

Second, it will increase the cost of the commodities the farmers purchase. In the main these costs can and will be passed on to the consumer.

As to practically every industrial commodity used by farmers it is a matter of common knowledge that all costs of manufacture and distribution, of which the large proportion are wage costs, are passed on to the farmer buyer. My statement on this subject will be found supported by every economic authority and true except in cases of over-supply in uncontrolled industries.

Let there be a Wagner law unionization of the farm-implement plants, of the fertilizer factories, in the automobile, or radio, or textile, or shoe or other factories, the products of which the farmers must buy, and then these farmers must pay their share—very large as a class—of all this increase. This is blow number two to agriculture.

An increase in cost, a decrease in income—a further widening of the wage gulf between farmers and unionized workers, which gulf today is the largest major obstacle to general business recovery is the inevitable sequel.

This is just another of the proposals to burden industry with autocratic bureaucratic regimentation, cost to be paid as to our farm products, mostly by the farmer producers. It is ruinous alike to business, to business morals, to the dignity and the spirit of enterprise and individuality which has been, until now, the pride and motive power of American life and progress.

We need statesmanship which will devise specific legislation to meet specific problems, and not attempt legislation in this wholesale way.

There is no use dodging the issue presented by this Wagner bill. It is a bill designed to maintain high prices for labor, which will increase labor costs, and to increase not total number of workers but of unionized workers who will secure these high wages. It is a bill to throw the protection of the Federal Government around this high-wage class. Why 30 hours at $30 a week for this minority group, while farmers toil 7 days, 12 hours to 14 hours a day for what will be left for them out of the consumer's dollar?

It is axiomatic that a better market results when wage workers have more money, but to be truly effective this greater earning must come from more and better work, and not from artificially created labor shortages. I protest not against the workman getting good wages, but against governmental, political discrimination in his favor at farmer's expense.

Farmers must pull themselves through this period by hard work, good methods, careful planning, and close buying. Emergency help in a few lines has been helpful—we ask only emergency help. The Wagner bill, if passed, is permanent legislation which we must pay for through the nose. It ought not to pass.

AMERICAN ASSOCIATION OF CREAMERY BUTTER MANUFACTURERS,
A. M. LOOMIS, *Washington Representative.*

STATEMENT OF AXTELL J. BYLES, PRESIDENT AMERICAN PETROLEUM INSTITUTE

To the Committee on Education and Labor of the United States Senate:

GENTLEMEN: The executive committee of the board of directors of the American Petroleum Institute, a national trade association of individuals engaged in the petroleum and allied industries, hereby expresses opposition to the enactment of Senate bill 1958 (commonly referred to as the Wagner labor disputes bill) for the following reasons:

1. Despite its avowed declaration, the bill would not leave the individual employee or any minority group of employees free to choose the method of bargaining.

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2. The bill is wrongly premised in that it will foster discord and dispute between labor and management rather than further peaceful industrial relationship.

The bill would inject an outside organization between the employees and their employer regardless of how effective and satisfactory their collective bargaining agency had been in the past. Experience has indicated that groups are always willing to pass the responsibility of working out a difficult problem to someone else. If the National Labor Relations Board is established permanently, it can expect more and more problems to go to it without the parties concerned having put forth their best efforts to reach a satisfactory agreement.

3. The bill proposes to direct by Government fiat the type of labor union or organization which may exist, thereby in effect creating a labor monopoly without authority in the Government to regulate such a monopoly and compel observance of fair practices. Such a system once established would inevitably lead to further encroachment upon what are now recognized as the inherent rights of labor.

4. Section 5 makes it an unfair labor practice for an employer in any way to restrain, supervise, or influence employees in their steps leading to organization, while paragraph 6 of this section provides:

"* * * That nothing in this act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if no attempt is made to influence such labor organization by any unfair labor practice, if such labor organization is composed of at least a majority of such employer's employees, and if the said agreement does not cover a period in excess of one year."

The first five paragraphs of section 5 proclaim the duty of employers to withhold all influence over labor organizations; paragraph 6 abandons any pretense of securing the liberty of the employee and permits the employer to agree with the labor union to compel the minority to join the union. For freedom to contract there has been substituted compulsion to join a labor organization, and the employer, while restrained from advising his employees, is empowered to compel them even against their will to pay dues to a labor union and make it their only contact with their employer whether they like it or not.

The National Industrial Recovery Act intended that the employee should be free to select his agency for collective bargaining. The employer is rightly restrained from using any undue influence. Similar restraint should be placed upon labor organizers if the employee is to exercise his freedom of choice.

5. The bill confers upon a National Labor Board and its agents drastic, unwarranted, and probably unconstitutional powers. As it stands, the bill is primarily framed to confer rights and powers not upon American labor but upon the National Labor Board and upon labor organizers.

The Board could intercede to establish the units of collective bargaining or to render a decision on a controversy without invitation from either parties concerned; or if both parties had agreed to a procedure, including the selection of a board of arbitration, the National Labor Relations Board might intervene to change the procedure.

6. The bill abrogates existing contracts between employer and employees without regard to their merit or benefit to either or both parties to the contract.

7. The bill provides that the employees can confer with their employer without loss of time or pay. This provision would probably be adequate if the employees were confined to a single plant. However, in the oil industry employees and their representatives are scattered over wide areas which makes it necessary to incur traveling and hotel expenses in connection with these conferences. In addition to this the employer should be permitted to pay the expenses of conducting an election if the employees or their representatives make such a request.

8. The effect and probable intent of the bill is to destroy what is known as "employee representation plans", many of which have existed satisfactorily to workers in the petroleum industry for a long period of time.

We believe that the President, in his settlement of the recent automotive industry situation in Detroit, has written for American labor and employers alike the essence of any desirable labor legislation pertaining to collective bargaining.

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Brief Presented in Behalf of the Associated General Contractors of America

Mr. Chairman and gentlemen of the committee, when the Wagner labor disputes bill was before this committee at the last session of Congress, the Associated General Contractors of America were in full accord with the unqualified denunciation of the provisions of that proposal as unanimously expressed by representative business and industrial interests throughout the country. On practical and constitutional grounds we were opposed to its basic principle of making the employer's bargaining prerogatives subservient to those of the employee, as was attempted to be done in that bill under the guise of equalizing bargaining power.

We felt then, as we feel now, that no sound purpose could be served by stripping business and industrial management of its constitutionally conferred right to freedom of contract, and that, to the contrary, a very serious impediment to recovery would result if the question of labor relations in private industry was to be delegated to a Federal board created solely for the purpose of furthering the interests of organized labor, and without an equal affirmative power to see to it that justice is done to the employer.

Despite the earnest effort of the distinguished author of that bill to work out a more acceptable substitute proposal, as is represented in the measure which you now have under consideration, S. 1958, he has failed to overcome our basic objection, which we have just recited. Aside from that, he has added as section 9 of his new bill the mandate that the representatives of a majority of the employees in a unit (whether the unit be an employer unit, craft unit, plant unit, or other unit as the board in each case may decide) shall be the exclusive representatives in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. Senator La Follette already has suggested to you the temptation for gerrymandering under this provision, which was admitted by Chairman Francis Biddle, of the National Labor Relations Board, with no other comment than that it is a risk that must be run in all democratic government. We deny that truly democratic government ever abrogates the equal application of constitutional rights to the minority, such as would be accomplished under section 9 of this bill by prohibiting workers to bargain individually or in minority groups with their employers.

However, we have no intention of taking your time by going into a detailed analysis of each of the various provisions of the bill. Our position can be concisely stated as being unalterably opposed to the proposal on principle, and as denying its application to our industry even should the bill be enacted with that intent. We rely for substantiation of the latter stand upon a preponderance of clear-cut opinions by the Supreme Court of the United States as to the extent of the power of Congress to regulate business under the commerce clause of the Constitution, which is the power upon which the pending proposal admittedly is predicated. Our contentions in this regard recently have been lucidly enunciated in the decision of the District Court of the United States for the District of Delaware in its decision and opinion on the *Weirton Steel Co. case*, to which we believe this committee should give studied consideration before passing upon the pending bill.

We also desire to submit as briefly as possible, additional judicial opinion which we believe to be germane and which constitutes an undeniable indictment and rejection of the purposes and intent of S. 1958.

For instance, in its consideration of the case of *Adair* v. *United States* (208 U. S. 161) the Supreme Court had before it the question of the right of Congress to prohibit in section 10 of the Erdman Act the discharge of an employee because of his membership in a labor union and the question as to the extent that Congress may legally go under its power to regulate interstate commerce.

We wish to impress upon you that this act related only to common carriers engaged in interstate commerce, over which Congress admittedly has jurisdiction, and did not apply, as the proponents of the bill under consideration would have it apply, to all industry regardless of its interstate character. In holding the provision unconstitutional, the Supreme Court, in an opinion by Mr. Justice John Marshall Harlan, stated as follows:

"The first inquiry is whether the part of the tenth section of the act of 1898 upon which the first count of the indictment was based is repugnant to the fifth amendment of the Constitution declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section,

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in the particular mentioned, is an invasion of the personal liberty, as well as the right of property, guaranteed by that amendment * * *. It was the right of the defendant to prescribe the terms upon which the services of Coppage would be accepted, and it was the right of Coppage to become or not, as he chose, an employee of the railroad company upon the terms offered to him. Mr. Cooley, in his treatise on Torts, page 278, well says: 'It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and if he is wrongfully deprived of this right by others, he is entitled to redress.' * * *

"While, as already suggested, the rights of liberty and property guaranteed by the Constitution against deprivation without due process of law, is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least in the absence of contract between parties—to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee * * *. In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land. (Cites cases in support.)

"Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the States, must have some real or substantial relation to or connection with the commerce regulated. But what possible legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce? Such relation to a labor organization cannot have, in itself and in the eye of the law, any bearing upon the commerce with which the employee is connected by his labor and services * * *

"Looking alone at the words of the statute for the purpose of ascertaining its scope and effect, and of determining its validity, we hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part. If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ in the conduct of its interstate business only members of labor organizations, or only those who are not members of such organizations—a power which could not be recognized as existing under the Constitution of the United States * * *. We need scarcely repeat what this Court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, cannot be exerted in violation of any fundamental right secured by other provisions of the Constitution. (Cites *Gibbons* v. *Ogden*, 9 Wheat. 1, 196; *Lottery case*, 188 U. S. 321, 353.)

"It results, on the whole case, that the provision of the statute under which the defendant was convicted must be held to be repugnant to the fifth amendment and as not embraced by nor within the power of Congress to regulate interstate commerce, but under the guise of regulating interstate commerce and as applied to this case it arbitrarily sanctions an illegal invasion of the personal liberty as well as the right of property of the defendant Adair."

Now it is true that two very distinguished members of the Court dissented from the majority opinion, but it is noteworthy that in their dissenting opinions they clearly indicated their belief that there is a limit to the extent of which Congress may constitutionally go in legislation of this character. Mr. Justice McKenna, for instance, stated that: "I grant that there are rights which can have no material measure. There are rights which, when exercised in a private business, may not be disturbed or limited. With them we are not concerned. We are dealing with rights exercised in a quasi-public business

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and therefore subject to control in the interest of the public." Surely Congress is not prepared to say that all business is quasi-public business, as it would do through enactment of this bill, and thus strip every business man of his fundamental rights under the Constitution.

Mr. Justice Oliver Wendell Holmes, in his dissenting opinion, likewise recognized a very definite line beyond which Congress might not go, even in its regulation of the railroads under its power to regulate interstate commerce, when he stated as follows:

"The ground on which this particular law is held bad is not so much that it deals with matters remote from commerce among the States as that it interferes with the paramount individual rights secured by the fifth amendment. The section is, in substance, a very limited interference with freedom of contract, no more. It does not require the carriers to employ anyone. It does not forbid them to refuse to employ anyone, for any reason they deem good, even where the notion of choice of persons is a fiction and wholesale employment is necessary upon general principles that it might be proper to control. The section simply prohibits the more powerful party to exact certain undertakings, or to threaten dismissal or unjustly discriminate on certain grounds against those already employed."

It will be seen that the intent of section 10 of the Erdman Act and the intent of the national labor relations bill are very similar, althought the latter is much more drastic and of limitless application. In view of the Supreme Court's decision as to the former, therefore, it is impossible for anyone to honestly conceive of the Court sustaining the provisions of the Wagner bill. As a matter of fact, the Court's decision in the case which we have just recited to you, together with its decision in the *Employers' Liability cases* (*Howard* v. *Illinois Central Railway Co.*, 207 U. S. 463), raises a serious question as to the validity of the labor provisions in the National Industrial Recovery Act itself.

Under the National Industrial Recovery Act, and under the national labor relations bill, Congress attempts to regulate all business, of whatever nature, on the ground that all business has some bearing on interstate commerce. It completely ignores the fact, sustained by the Supreme Court, that production is not commerce. The business that the members of our association are engaged in, general contracting, is primarily production and not commerce, and this viewpoint is sustained by the Supreme Court's opinion by Mr. Justice Edward Douglass White in the *Employers' Liability cases*, as follows:

"It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all of his business concerns to the regulating power of Congress. To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely State concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however, inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."

For the reasons that we have cited, and in the interests of the industrial welfare of the Nation, the Associated General Contractors of America urge that the national labor relations bill, S. 1958, be not favorably reported by this committee.

BROTHERHOOD OF RAILROAD SHOP CRAFTS OF AMERICA,
Sacramento, Calif., March 21, 1935.

Hon. JAMES T. CLARK,
Clerk United States Senate, Committee on Education and Labor,
Washington, D. C.

HONORABLE SIR: We are herewith submitting a brief to the United States Senate Committee on Education and Labor relative to Senator Wagner's bill S. 1958.

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We are in full accord with the bill insofar as the elimination of company unions and the protection of collective bargaining in which the majority rule shall determine the representation of their choice covering the drawing up of rules, wages, and working conditions.

We feel that it is very essential that there should be a proviso in the bill providing for the representation of any individual employee and that employees will be permitted representation of their own choosing where the individual employee has a personal grievance coming under the provisions of the agreement. This is necessary in that the rights of any individual employee cannot be exploited by the representatives selected by the majority for collective bargaining.

If this is not provided for in this bill it will be nothing more than arbitrarily forcing employees into labor organizations against their own wishes and which due to personality or other reasons they will be unable to seek redress as their rights are restricted for representation to one organization only, and even restricts the rights of the individual himself from handling a grievance for himself.

We do not believe that the rights of any American citizen should be restricted in which he would have no appeal from a dictorial power forced upon him, and should this bill be passed without the protection as herein requested it will add to the already destruction of personal rights of employees on the railroads of this country due to interpretations placed on certain sections of the Emergency Transportation Act by labor organizations for financial gain rather than protection, and the only way to afford protection for employees from being exploited by labor organizations is to give them the right to choose their own representation where they are personally involved in grievances growing out of the application of an agreement consumated by the majority.

We want to make ourselves very clear in that we are against company unions if company controlled.

We are for majority rule for collective bargaining; we desire protection for the individual employee who desires other representation where an employee is personally involved.

In presenting this we are voicing the sentiment and requests of over 200,000 mechanical employees of the railroads of this country represented by our organization, and hope the committee will give our request very earnest consideration.

Yours very truly,

BROTHERHOOD OF RAILROAD SHOP CRAFTS OF AMERICA,
By H. C. KINNEY, *President.*

STATEMENT OF THE CHICAGO ASSOCIATION OF COMMERCE

The Chicago Association of Commerce, speaking for itself and for 4,500 industrial, commercial, and professional leaders of the Nation's second city, makes this protest to the Senate Committee on Education and Labor and to the Congress, against the provisions of S. 1958, the so-called "Wagner Trade Disputes Act."

The title to S. 1958 is misleading. Called "A bill to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes", the measure more properly could be termed "A bill to unionize all business and industrial establishments", since it gives the National Labor Relations Board and its regional labor boards and agents unrestricted power to declare as unfair labor practices nearly every act of an employer in his relations with employees. In effect the bill would accomplish the exact opposite of its announced purpose and encourage rather than adjust differences between employers and employees.

Throughout its several pages the measure proceeds on the false theory that the interests of the employer and the employee are essentially antagonistic, and, therefore, the remedy is to place a powerful series of weapons in the hands of employees to assure obtaining for them rights and privileges which are assumed to be unfairly withheld.

Under the heading, Declaration of Policy, the measure begins in section 1 with the statement that "equality of bargaining power between employers and employees is not attained when the organization of employers in the corporate

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or other forms of ownership association is not balanced by the free exercise by employees of the right to bargain collectively through representatives of their own choosing." No one questions the right of employees to bargain collectively through representatives of their own choosing. It is certainly not true, however, and many hundreds of examples could be adduced to prove the untruth of the assertion that only where employees have bargained collectively does any equality in bargaining power exist.

The same section follows with the novel theory that it is necessary to maintain equilibrium between the rate of wages and the rate of industrial expansion. If the proponents of this theory are sincere, one wonders if they would be willing to admit the logic of its opposite, and concede by amendment that as the business of the employer decreases wages should be decreased in the same proportion.

Despite numerous court decisions in cases coming under the National Industrial Recovery Act, which have uniformly held that questions of production, local relations in employment, and related matters have nothing to do with interstate commerce, and consequently are not subject to Federal regulation, we find that this measure expects to obtain legal sanction on the theory that unfair labor relations constitute obstructions to the free flow of interstate commerce. Also, it is asserted that the general welfare is to be promoted by encouraging the practice of collective bargaining.

The provisions of this measure will apply to the very smallest, as well as the larger employers of the Nation. The previous measure, in 1934, exempted employers of less than 10, from its operations. Also, by this bill employees of the Federal Government, State, and subsidiary governments, and labor organizations, are exempt. If the measure will promote the free flow of commerce and grant full freedom to workers, why do its proponents deny these contemplated benefits to any class?

Among the definitions in section 2 of the act, an employee is one who may be on strike or out of work as the result of some dispute over wages or working conditions, but nevertheless the employer, under the terms of the act, may be made responsible for his wages and forced to pay them.

Under the theory that the act may gain legality through the commerce clause of the Constitution, the term "affecting commerce" is employed and is construed to mean "in commerce or burdening, or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce, or obstruct the free flow of commerce."

In view of this definition, it might appear that every labor relationship a commercial or industrial concern might have with the distributors, or transportation agencies, would burden or affect commerce, so there would be little if anything an employer could do which might not subject him to the liabilities imposed by the bill.

Moreover practices or policies of an employer not actually the subject of dispute might nevertheless be called into question on the theory that something the employer does or does not do is tending to lead to a labor dispute that might burden or affect commerce. The National Labor Relations Board could intervene, file a complaint, make an investigation, hold a hearing if it desired, and finally issue an order to the employer.

In defining the term "labor dispute", any controversy having to do with the terms or conditions of employment is included, regardless of whether the disputants stand in the proximate relation of employer and employee. Thus the employer is placed at the mercy of communists, preachers, social workers, outside labor leaders, or anyone in fact who might allege that the employer's method of hiring, compensating, or laying off employees, was unfair. The National Labor Relations Board could take cognizance of any such charges, and compel the employer to defend himself.

The act creates, as a permanent agency, the National Labor Relations Board to succeed the Board by the same name, which expires by limitation in June of the present year. Why Congress should be asked to establish such an agency as a permanent part of the Federal Government, is not at all clear. Certainly no demand from the employing interests of the Nation can be shown for such an agency. Neither has the vast army of industrial workers of the country made any such demand. It would seem that this legislation is proposed to satisfy only the representatives and members of national labor unions.

The National Labor Relations Board is proposed to be empowered to exercise its functions at any time, in any part of the United States, and any member

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participating in an inquiry is not disqualified from subsequently participating in a decision of the Board in the same case. This means that the same member may serve in the capacity of judge and jury.

The Board is proposed to be given the widest authority to make, prescribe, and amend rules and regulations governing its practice and procedure. Regardless of what other agencies may exist, by reason of agreements, codes, or laws, for the purpose of settling questions relating to labor, this Board may disregard their findings and take jurisdiction whenever it chooses. Thus it is created by the act as the Supreme Court on all questions having to do with labor relations. Its power is primary and exclusive.

Should this act pass, an employer would be deprived of practically all control he has over his labor relations and labor costs. For example, under the section of the bill dealing with rights of employees, they are given the right to assist labor organizations. Plainly, this means that employees might participate in boycotts, sympathetic strikes, picketing, coercion, and other acts not countenanced or endorsed by a majority of a plant's working force. If the attack upon the interests of the employer and loyal employees proved successful, both would lose. Friendly relationships and mutual cooperation and respect might be succeeded by strife and the whims of outside leadership.

The employer, on the other hand, is forbidden to interfere with, restrain, or coerce employees in the exercise of any of their rights, as stated in the measure. For example, he can have nothing to do with the formation or administration of any labor organization, or contribute financial or other support to it, except that he is permitted to confer with employees during working hours without deducting from their time or pay.

This is one of the provisions in the measure intended to discourage and make difficult the operation of employee-representation plans, or so-called "company" unions. Under such plans as they now operate, chosen representatives of the employees are permitted, on company time and pay, to confer with employees in the development of programs and suggestions for the consideration of the management.

This provision would necessitate such conferences being held outside of working hours and might even be interpreted to prevent the employer allowing his own employees after working hours to confer within the plant or office. When employees desire to confer together on matters of mutual interest to themselves and to the company for whom they work, we can see nothing wrong in such procedure, but under this act the employer who permitted it could be haled before the National Labor Relations Board or any of its agents for violation of the law.

While the employer is prohibited from interfering with, restraining, or coercing employees, the act is silent on the subject of coercion by employees. Conviction of coercion subjects the employer to severe penalties. Everyone, including leaders in the field of union labor, knows that by far the greatest number of labor disputes arise through attempts by employees to coerce their employer to do certain things. The question might be asked if anything the employer may do to reason with employees, or protect his property and business reputation, is to be construed as unfair, and, conversely, anything employees do, as right and legal. In fairness, why not treat both alike and penalize the employee convicted of coercion by withdrawing from him the rights conferred in the bill? The same action cannot in morals or justice be legal when performed by one citizen and illegal when performed by another.

It is declared an unfair practice to encourage or discourage membership in any labor organization. Here are words so broad in meaning and subject to such wide interpretation that the employer might well despair of talking to his employees on any subject relating to his business for fear of being charged with discrimination through encouraging or discouraging membership in a labor organization. The words are used in connection with hiring or tenure of employment, but nothing in the bill limits their application to written terms of contract.

In the same section occurs a specific exception which permits the employer to make an agreement with a labor organization for maintenance of a closed shop, if a majority of employees in the unit concerned belong to a labor organization. Here the question arises whether employers and independent or unaffiliated employees are to understand by this that the Federal Government recognizes, sponsors, and encourages the closed shop.

Another unfair labor practice for the employer is to discharge or otherwise discriminate against an employee who has filed charges or given testimony

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under the act. This provision permits an employee to malign and misrepresent his employer in the grossest manner, and even though the Board finds his charges false, the employer is nevertheless prohibited from discharging the employee or otherwise penalizing his unwarranted action. The unfairness of such a provision requires no further comment.

Under the heading "Representatives and Elections", the bill states that representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining. Here we find a bald attempt to force the Federal Government into a clear declaration in favor of the majority rule. Such declaration repudiates the plan of majority and minority representation according to proportions as approved by the President for the automobile industry. Contrary to principles of justice and the American theory of government, it deprives minorities of their rights to bargain as they choose.

It should also be pointed out that while in section 1 of the act, it is stated, among other things, that the policy is to secure full freedom for employees in association and bargaining, this section 9 (a) takes it away so that we have left only full freedom for whatever majority may be in power at any given time. There is a proviso to the effect that any individual employee or group of employees may present grievances to their employer, but what power he would have to grant relief is highly problematical since he is required to be governed by whatever agreement he can effect with the majority. Note also that the minority is not authorized to utilize the powers of the Board to secure consideration for their demands.

In holding elections the Board is empowered to determine the appropriate unit, whether plant, craft, or other subdivision. Nothing in this section 9 (b) prevents the Board from subdividing the plant into as many units as it chooses, or from changing its mind from time to time, so as to make easy the securing of majority representation for the particular labor group it favors. Imagine a plant in which some one department operated by a few employees was vital to the entire operation. The Board could declare such department an election unit, and if a majority could be obtained, by an outside labor organization, the entire plant and all of its employees might be forced to comply with wage and other working conditions wholly unwanted by the vast majority.

Whenever any question concerning representation arises, the Board may investigate and certify the representatives selected. The Board may also, but does not have to, hold an election to determine who are the representatives of the majority. Nothing in this section prevents the Board from holding as many elections, at frequent intervals, as it chooses, until those it favors obtain a majority. And once its favorites win, no power in the entire act can compel the Board to hold another election even though it appears that sentiment within the company has undergone a change. So all-embracing are the powers conferred upon the Board, that it could even decide that a real or potential controversy exists and without an election determine who represents the majority of the employees.

As previously pointed out, the Board is created by the act as the supreme court of labor relations. Where other means of settling a controversy through agreements, codes, laws, or otherwise, exist, it may defer action to permit such agencies to act. But at any time, without the requirement of notice, it may step in and take jurisdiction and issue its orders at will. Many industries have made commendable progress in building up sound employee relationships. And in numerous States, laws have encouraged or permitted employers and employees to seek amicable solutions of their mutual problems. Whatever has been accomplished along these lines, could be thrown overboard at a moment's notice any time the Board should decide to assume jurisdiction. No industry can plan constructive steps toward recovery and increased employment with such a sword hanging over the heads of business executives and employees alike.

Should a charge be made, or the Board have reason to believe an employer was engaging in any of the practices called unfair by this act, it could delegate to any agent power to serve a complaint and require the employer to attend a hearing not less than 3 days later. And then we find a remarkable provision that the Board can amend the complaint at any time prior to issuing an order based thereon. This could mean after the employer has testified at the hearing, and gone home with the feeling he had satisfactorily answered all charges.

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In the hearing on a complaint, the Board may allow any other person to appear and present testimony. Any other person might be an outside labor organizer, a social worker, competitor, or person subsidized by a competitor. After all the evidence is taken and reduced to writing, the Board issues its findings of fact and should they uphold the complaint, in whole or part, the Board may serve a cease and desist order including restitution. What restitution covers is not specifically indicated, but by reference to other sections, it may be assumed to include wages of employees on strike, or increases in compensation during the period of dispute or existence of the alleged unfair practice. Thereafter the employer is required to report from time to time the extent and progress of his compliance with the orders of the Board.

Should an employer fail or neglect to obey an order of the Board, it may call upon any circuit court of appeals of the United States within the district wherein the alleged unfair practice occurred, to compel by court order compliance with its findings. Except under special circumstances, the court cannot consider any evidence not included in the transcript of the Board, or any objections not urged before the Board. And it should be noted that the Board itself in conducting its hearings is not governed by the rules of evidence prevailing in courts of law or equity. The employer is then permitted under the limitations outlined to present what defense he can. The findings of the court are conclusive, except that appeals may be taken to the Supreme Court of the United States. One may well wonder under these conditions what opportunity the average small employer of the Nation will have to secure justice and protect his business and his loyal employees from continual attempts by outsiders to foment controversy.

Similarly, if the employer feels that an injustice has been done him by some order of the Board, he may appeal to the circuit court of appeals of the United States within his district, but in such case he is subject to the same rigid limitations as to evidence and objections as outlined in the case of the Board taking an appeal. Also, unless specifically ordered by the court, the appeal of the employer does not operate to stay the Board's order. Assume an order of the Board greatly increased the employer's operating expenses, and his appeal was pending in court for many months before passed upon, the employer would be compelled to pay the increased costs during the time appeal was pending even though the court might agree with the employer and wipe out the unreasonable charges when the case is finally heard.

Section 11 of the act gives the several district courts of the United States jurisdiction to prevent and restrain unfair labor practices named by the act. But here we find the strange provision that they are to act solely at the request of the National Labor Relations Board. Just why the employer does not have the same right to seek relief from oppression or coercion threatening his employes and his business, is not apparent.

The Board is also given authority to act as an arbitrator in labor disputes, provided both parties sign an arbitration agreement. Once such an agreement is signed, the Board may proceed and make an award even though the employer may have signed the agreement under duress, or misrepresentation. The award of the Board is binding upon both parties to the agreement, in one paragraph of the arbitration section, but in another paragraph of the same section, appears the proviso that no employee individually and no group of employees collectively shall be compelled to render labor services without their consent.

In plain language this would appear to mean that the employer is bound by the decision of the Board, but in the rare event that the Board should hold with the employer, the employees nevertheless cannot be compelled to accept the wages or working conditions prescribed in the award. Once again one might ask if such a provision is in conformity with the principles of fairness or equity.

The arbitration section of the act also contains provisions whereby a petition for the impeachment of an award may be filed. In this connection appears the strange provision that partisanship known, or which by the exercise of due care, should have been known by a party to the proceedings, shall not constitute a ground for seeking impeachment of an award. In the same arbitration section is an attempt to limit the full discretionary power of the courts. It appears in the following language: "The court shall construe every award with a view to approving its validity."

The Board in section 13, under the title, "Investigatory Powers" is given what amounts to blanket authority to subpena and demand production of any

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and all data bearing upon or related to any of the subjects it may decide to investigate. Attendance of witnesses and production of evidence may be required from any place in the United States or its territories at any time. And an employer cannot refuse to produce records or give testimony on the ground that it would incriminate him. The wide powers given under this section even go so far as to compel all departments and agencies of the Federal Government to produce records, papers, and information in their possession relating to any matter before the Board.

This means that income-tax records could be subpenaed from the Bureau of Internal Revenue and business and industrial records from the Bureau of the Census, showing intimate details of a company's operations which, under present law, are in both instances confidential. Such confidential information appearing as evidence in the proceedings of the Board, could easily bring ruin to many a business concern.

In one of the closing sections of the act appears the statement: "Nothing in this act shall be construed so as to interfere with, or impede, or diminish in any way, the right to strike." Thus the act, in one of its final paragraphs, reaches the acme of unfairness by making it plain to all who read, that in its entirety, it is aimed to favor one particular type of labor organization without at the same time imposing upon employees or labor organizations any measure of responsibility for their acts.

If those who advocate the passage of S. 1958, or similar legislation, would consult the experience of the Commonwealth of Australia, they might not be so certain that the measure would prove of real benefit even to labor unions. There their arbitration courts possessing powers similar to those proposed to be given the Board by this act have not satisfied either labor or employers. Tremendous expense for their government and for both sides in cases before the courts, long delays, decisions in one section which do not meet conditions in another, and the promotion of a spirit of antagonism between employees and employers are just a few of the conditions which have developed in that country.

Spokesmen for the various types of workers' representation plans and independent employees do not want this measure passed by Congress. They have so testified last year when S. 2926 was before the Congress. Their testimony to the same effect was again repeated with reference to S. 1958 in the present hearing. Congress should be reminded that these classes represent 90 percent or more of the Nation's workers. Neither have employers indicated any desire for the measure. On the contrary, their testimony has been almost wholly opposed to its numerous unfair and un-American provisions. Are we to conclude that only labor-union officials and their members seek this legislation? If so, Congress faces a serious question of deciding whether it has either moral or constitutional grounds for legislating to one class or group of people, rights, powers, and privileges denied to all others.

Since nowhere in the measure is the employer given any rights except the doubtful privilege of agreeing upon imposition of a closed shop, whenever an outside labor organization can secure by strike, coercion, or other means, a majority of his employees, what could he expect in the way of justice at the hands of a Board designated to administer such a law? Would it be within the bounds of reason to believe that such a Board, no matter how able its members, would devote much time or thought to protecting the interests of the employer and his unorganized employees in the enforcement of an act which throughout its many sections breathes enmity against every conception of that amity and mutual cooperation upon which American industry is founded and has given us a measure of progress unequalled throughout the world?

The measure is unsound, unconstitutional, and unfair. It should be defeated.

THE CHICAGO ASSOCIATION OF COMMERCE,
GEORGE W. YOUNG, *President*.

CONSTRUCTORS ASSOCIATION OF WESTERN PENNSYLVANIA,
Pittsburgh, Pa., March 25, 1935.

Hon. DAVID I. WALSH,
Education and Labor Committee, United States Senate.

DEAR SIR: The Wagner disputes bill (S. 1958) in its present form is not conducive to recovery.

We are on the verge of upheavals as evidenced by the threatened coal strike, etc., and by the troubles of last year.

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Both employee and employer must have a square deal and this bill does not provide it.

This group which is the backbone of the construction industry in the western part of Pennsylvania urges that this bill be amended to provide for equal representation, or be entirely eliminated in its present form.

Respectfully yours,

CONSTRUCTORS ASSOCIATION OF WESTERN PENNSYLVANIA,
ROY A. MACGREGOR, *Executive Secretary.*

DAVIS STANDARD BREAD CO., INC.,
Los Angeles, March 19, 1935.

Hon. DAVID I. WALSH,
Washington, D. C.

DEAR SIR: This organization, representing over 700 people, vigorously oppose the passage of labor disputes bill (S. 1958). We firmly believe that such legislation is most undesirable at this time, and presents an unwarranted interference of Government in the relations between employer and employee.

We are convinced from recent experiences that any such measure would create serious unrest among workers, with its resultant great disadvantage to both employer and employee. At the same time it would undoubtedly invite outside interference and encourage racketeering, which would be most disturbing to present friendly and cordial industrial relations.

At this time, also, we wish to earnestly express our opposition to the passage of any legislation that would further limit the hours of the work-week as is proposed in a number of 30-hour labor bills. Such proposals are unsound, impractical, and would defeat the very object which they hope to attain. They would unreasonably increase the cost of production and advance immeasurably the cost of living. It would be impossible to pass on to the consumer such excessive increase in the cost of manufacturing, thus many concerns would be forced into bankruptcy with the resultant increase in unemployment.

Business is eagerly desirous of cooperating with Government but many proposals before Congress are shaking the confidence of business and retarding the longed for recovery. What business needs is a restoration of confidence and a respite from further governmental interference and regulation.

We most earnestly urge that you will lend your support to such a principle.

Very truly yours,

DAVIS STANDARD BREAD CO.,
R. R. BEAMISH, *President.*

MARCH 28, 1935.

Hon. DAVID I. WALSH,
Chairman Senate Committee on Education and Labor,
Washington, D. C.

MY DEAR SENATOR: Before taking the liberty of addressing you on the question of the Wagner trade-disputes bill, the writer has made rather an extensive trip throughout those trades to whom we sell our equipment and, wishing to be absolutely fair and impartial in the matter of our New York Senator's bill, S. 1958, made the contact of workers engaged in menial positions and again employees in more responsible positions, and last but not least their employers.

To those whose education has not permitted them to thoroughly understand the import of the said bill, the writer showed them exactly what the intentions of the bill were, and when they realized the fact that their independence as American citizens was to be curtailed by the designation of their individual rights to some other individual, they became incensed and in their own honest way deplored the fact that the Constitution of the United States, which guarantees to them the privilege of life, liberty, and freedom, was to be curtailed by a law which, when possibly brought before the Supreme Court of the United States, would of necessity be declared unconstitutional for just this very reason.

Senator Wagner may believe that the principles of his bill will be giving labor more than its fair share of right, but it is clearly evident that he is playing into the hands of the dominating parties of the American Federation of Labor who, permit the writer to state, represent but a very small minority

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of the aggregate workers of the United States, and this has been conclusively proven whenever an honest, fair test has been made in industry as a whole.

If the individual worker is no longer to be permitted to act according to his own conscience and has individual thought and wish and has to be subservient to the demands of an organized minority now maintaining a powerful and well-financed lobby in the Halls of Congress, then the American worker is subject to the padrone system and is no better off than the poor, harassed soviet worker, whose soul may belong to him but whose body and production is the sole right and ownerhip of the Communist leaders of the Russian Republic.

Men of intelligence who can read and understand the dangers lurking in this bill are also incensed at the fact that their labor and their individualism is to become a commodity amenable to the rules of a labor organization.

Senator Wagner and anyone else in favor of the bill in question cannot talk this fact away. They have tried and have elaborated upon the social justice, but this is the biggest farce that has ever been perpetrated on the American public.

Conditions throughout every industry are far from normal and if this continuous, unnecessary, and unethical legislation is continually agitated by elective representatives who in full truth do not know the ravages that will be occasioned by the passage of such bills, then it is about time that a "spade be called a spade." Therefore, the writer wishes to state emphatically that he believes that there is no more thought of true social justice or equality in the mind of the worthy Senator from New York in advocating this bill than there is in gathering snowballs on the sidewalks of New York in the middle of August!

The worthy Senator, to the mind of thousands of people, is merely gallery playing with the thought of encouraging certain individuals in certain walks of life who are being supported by the poor workers who must contribute to organizations in order to have the right to a livelihood. The advocacy of this bill before the Senate of the United States is one of the most shameful endeavors to usurp the privilege of free and independent thought and action that has ever been presented.

The writer regrets exceedingly the necessity of having to take issue with the Senator from his own State, but other men than the writer have for some time been continually watching the thought and trend of the Senator from New York and have freely discussed the fact that it is a case of rule and ruin just so long as Bob Wagner gets what he wants in the way of votes and support from the rank and file of labor organizations.

This is so clearly evident to any man of just public-school education that it is with simple amazement that we read of the possibility of support of such a bill. How in the name of all that is good for America and for the freedom and independence of its workers can anybody be so bamboozled as not to see the complete injustice of this bill to the workers of the United States as a whole.

Very respectfully yours,

EDWARD ERMOLD CO.,
WATSON A. GUTHRIE,
Secretary and Treasurer.

EMPLOYEES' ASSOCIATION OF THE LILLY VARNISH CO.,
Indianapolis Ind., March 26, 1935.

Hon. DAVID I. WALSH,
Senate Office Building, Washington, D. C.

DEAR SIR: The undersigned, who represent the entire membership of the Employees Association of the Lilly Varnish Co., want you to know, as chairman of the Senate committee now considering Wagner bill, S. 1958, that we are strongly opposed to the entire content of this bill.

Our opinion of this bill has been reached without any influence whatever on the part of our employer.

We do not like the Wagner bill because it implies that there is something wrong with our employees' association, and this is not true.

This bill, as we understand it, provides for a national labor board having power to decide whether we should deal with our employers by the entire company, a single craft, or by a single department. That is our business. We know, in our plant, just how we want to deal with our employer who has always treated us fairly in every phase of our relationship with him. We don't want any national board to tell us how to get along with our employer,

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nor do we want to deal with our employer through any kind of outside organization.

Therefore, will you please inform all of the members of the Senate committee now considering Wagner bill, S. 1958, of your receipt of our letter?

Thank you.

Yours sincerely,

Guy R. Biddle, Claude Atherton, Earl Camp, Ruby Bratcher, Webster Donoho, Graydon Lewis, L. H. Holland, G. R. Swanson, Michael Baffa, Olin F. Hastings, L. R. Dralle, Charles S. McGahey, H. B. Currens, L. E. Davis, Cooper Lewis, Frank T. Martin, O. C. Shaner, S. G. Taylor, Ernest Johnson, Harper Lee, V. Taylor, Owen Evans, Emette Isaacs, Forrest Lennis, Richard Bymaster, William Blake, W. Edward Inlow, Frank Kratosba, Jesse L. Tungate, Lewis Whetstone, Eugene W. Lipple, Ray Biddle, Harold Whisler, Eugene Christian, Geo. E. Farley, James Wirey, D. E. Smith, Harold Chloupek, Frank J. Hines, John Clauson, Frank Graham, L. R. Mack, Mack Edwards, Dei Wren, A. A. Cook, Lenox Binkley, Frank Vernon, Elmer Smith, Alvie Cassaday, Basil Soladine, Fred Donoho, Dow Hail, Alfred Kemp, F. J. Hamerin, Henry Ehrensperger, Frances Hayes, Cecille Perine, Robt. J. Munn, Alice Ainsley, Bess Hiatt, Mary Stringer, Edward Jones, Emile E. Mille.

NEW ORLEANS, LA., *March 27, 1935.*

The Honorable DAVID I. WALSH,
Chairman Committee on Education and Labor.
United States Senate Office Building, Washington, D. C.

DEAR MR. SENATOR: I am taking the liberty of writing you in connection with the Wagner bill, a copy of which has just recently been seen by me.

Now, as you know, I have no means of telling what your attitude is toward this bill, but knowing what I do of your broad, liberal views in matters of this kind, I feel sure that you will be interested in the reaction of an employee representative toward this bill and that you will give it all of the consideration that it deserves.

The employees of this company know that insofar as our relations with the company are concerned, there is absolutely no need of any legislation of this kind, but taking a larger view of the industrial situation of the country as a whole, and knowing the unscrupulous methods adopted by some employers in organizing fake unions, whose sole purpose was to prevent their employees from joining an efficient union for the purpose of collective bargaining, I feel that there is an urgent need for legislation along the general lines of the Wagner bill, and inasmuch as the above-mentioned unfair practices serve as a handicap to our company and its employees, and to all other fair companies and their employees, I feel that while protecting our interests in the matter we should at the same time support its general provisions.

Unfortunately, in their zeal for accomplishing their purpose there has been embodied in the Wagner bill several features which would seriously affect the efficient functioning of our and other representation plans throughout the country, thereby injuring a large number of satisfied employees.

When you stop to consider over a period of years we have demonstrated that through our representation plan we have attained conditions for all of our employees far better than has been attained by any other method for men employed in similar capacity.

Our wage scale is in no case less and in most cases more than those prevailing in a given community.

We have demonstrated that it is an unexcelled method of settling individual grievances and injustices which are bound to come up in any large organization, which is proven by the fact that almost all of the cases that are taken up by our representatives are settled in favor of the employees.

We have for years had in effect and practical operation all of those reforms which labor, organized and unorganized, and our Government administration have been clamoring for, such as old-age pensions, accident and sickness benefits, life insurance, both donated by the company, and our group insurance. our liberal lay-off allowances, and many other favorable conditions that have not been attained by any other form of collective bargaining.

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In view of the above facts, I feel that there can be no justifiable excuse for the adoption of any regulations which would hinder the operation of a plan that has given such amazingly beneficial results.

Therefore, as secretary of our Louisiana sales department representation plan, and as an employee of the company, I am sending you some proposed amendments and modifications which, if adopted, would, in my opinion, permit us to continue our good work as we have in the past and would at the same time enable the Wagner bill to accomplish all of those desirable features for which it was designed.

You, of course, realize that these proposals may not be couched in the proper legal phraseology, but will, I think, be clear enough to illustrate the purpose I have in mind.

Part 2, section 8: Cut out the words "or contribute financial or other support to it." (By reason of the nature of the business, employees particularly in the oil industry are scattered over a wide territory and in many instances it is necessary for them to travel considerable distances in order to attend joint conferences and other meetings which may be called for the purpose of discussing wages, working conditions, and other matters which have to do with the relationship between employer and employee. It therefore would work undue financial hardship on the employee or his representative to require him to pay the expense of these trips out of his own pocket. Section 8, subsection 2, as at present written, prohibits the employer to pay such expenses and would result in an undue and prohibitive hardship on the employee.)

Part 3, section 8: Add the following: "Such agreement to be for a period of not more than 1 year unless renewed by a majority vote of the employees of the company", and also add: "*Provided further.* That nothing in any such agreement shall prevent an employee from being or becoming a member of some other labor organization, and there shall be no discrimination against any such employee for being a member of any such other labor organization.

Part B, section 9: On line 5, page 10, insert after the word "shall" and before the word "decide" the following: "Hold elections to."

Part C, section 9: On line 16, page 10: Cut out the word "may" and substitute "shall", and cut out the word "or" and substitute "and."

There should also be a provision in the bill guaranteeing that no provision of the bill or action of the Labor Board shall serve to deprive employees of any company of favorable conditions that they have already attained or may secure.

Now, Mr. Senator, you understand that I have only attempted to define the opinion of the employees as it affects them and their representation plan as I see it, and have not attempted to cover the company's attitude at all.

However, I hope that you will see this as I see it and, in any case, I feel sure that you will give it your careful and unbiased consideration, and I want to take this opportunity of thanking you in advance for anything that you may do in this matter. If you should want to hear more of our representation plan and receive first-hand views of the employees on the Wagner bill, I would be willing to make the trip to Washington and to appear before your committee.

Yours very respectfully,

OLIVER J. BOWEN,
Employee Representative Secretary, Louisiana Sales Division,
Standard Oil Co. of Louisiana.

THE EMPLOYEES' COOPERATIVE ASSOCIATION
OF THE TWIN CITY LINES,
Minneapolis, Minn., March 26, 1935.

HON. DAVID I. WALSH,
United States Senator, Washington, D. C.

DEAR SENATOR: The undersigned are the president and secretary-treasurer of the Employees' Cooperative Association of the Twin City Lines. The executive committee, at a duly called meeting, authorized us as officers to write you and the other Minnesota Members of the Senate and the House, and to state to you our attitude with reference to Senator Wagner's labor disputes bill, S. 1958.

We are enclosing you herewith a brief history of our organization. This organization and its predecessor has had a continuous history of successful operation since October 1917, the time when it was first formed as a part of

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a settlement of a strike by the employees of the Twin City Lines at that time. We believe that if the bill is passed in the form in which it now is, it will seriously affect our organization. We believe at the present time that a majority of the employees of the Twin City Lines belong to our association. We have had during all of these years a satisfactory history of negotiations with our employer, and we believe at the present time that if an election were held we would be in the majority.

However that may be, we have completed agreements and a wage scale with the Twin City Lines representing our own members, which we believe are satisfactory to our members. We have, in addition to signing these contracts with our employer, had very frequently a number of conferences with the officials of the Twin City Lines relative to complaints of employees. Whenever requested, we have presented to the management complaints of employees, regardless of whether they were members of the association or not. We have tried to treat all employees alike, and the fact that a number of employees who are not members of the association have asked us to present their complaints would show, we believe, that our work is appreciated.

In view of our long and successful bargaining on behalf of the employees of the Twin City Lines we wish to protest against the passage of the bill in question for the particular reason that if the bill is passed and becomes law a majority of one vote may cause the union or association getting that slight majority to dominate the dealings with the company from that time on. We believe in minority representation as well as majority representation and we believe that where there is a considerable minority who themselves are organized, that such minority should have power to bargain collectively for its own members. We say this regardless of whether or not upon a vote taken we might be found to have the majority or the minority.

We do not think that the Wagner bill as now presented to Congress gives sufficient recognition of a considerable minority. We therefore ask the committee when redrafting the bill to take into consideration the arguments which we make make and to so redraft the bill that substantial minorities may have power to bargain collectively for their own members. Unless this is done we feel that in a great many plants there will be continual friction between factions among employees calling for continual elections and reelections, with the result that the labor situation in said plants will be continually in a state of turmoil. We are opposed to the bill in its present form.

We wish to thank you for your consideration of our situation.

Yours truly,

EMPLOYEES' COOPERATIVE ASSOCIATION,
FRANK J. WAGNER, *President*,
A. C. CATHCART, *Secretary-Treasurer*.

HISTORICAL STATEMENT

Early in October 1917, about 100 men waited upon Mr. Lowry, the president of the company, requesting that some form of organization be perfected to bargain collectively with the management. As the result of that conference, a committee of 17 trainmen was invited to discuss the matter further. Out of that discussion there came the Trainmen's Cooperative and Protective Association. This organization permitted only trainmen to belong. They met often at the beginning of the association for the purpose of negotiating working conditions, rate of pay, etc. They secured several increases of pay during the years this association was in existence.

In August 1933, the president of the company called the members of the executive committee of the Trainmen's Cooperative and Protective Association together for the purpose of explaining the N. I. R. A. code provisions for collective bargaining. He suggested that the association should be amended to fit the regulations of the code.

On September 5 the regular quarterly meeting of the cooperative committee was held and the new constitution was adopted, which had been changed to include all employes of the company. The name of this new organization was the Employees' Cooperative and Protective Association. On the executive committee there were 3 representatives from each district, together with the 11 heads of departments organized under the new association. The election of officers of the association was conducted on October 17, 1933. Only employee members were present during the election and only employees who were members of the association were elected to serve on the executive committee of

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the association. However, in the meantime a local union had been formed among a number of the trainmen, called the Amalgamated Association of Street and Electric Railway Employees. Members of the Amalgamated insisted on retaining their membership in the Cooperative and Protective Association with the idea of wrecking this association. To prevent this members of the association who were not members of the Amalgamated decided to draw up a new constitution restricting membership to those who did not belong to the union.

To accomplish this, several members of the executive committee who had been appointed on a committee for reorganization set about to obtain members for a new association which would succeed the Employees' Cooperative and Protective Association. The result was that the organization committee drafted a new constitution and bylaws. The object of this association was to provide a convenient and efficient means of promoting in the public interest the best conduct of the business of said Twin City Lines and to provide for mutual and helpful cooperation among all employees, the officials, and management of the Twin City Lines. To secure such business benefits for its members as may be obtained by cooperation and conferences between employees and officials and provide for the investigation and adjustment of all questions which may arise concerning working conditions of employees, in a spirit of cooperation through committees of employees elected by the employees from each election district on the system of the Twin City Lines as the same now exists or may hereafter exist. To secure for its members all the benefits accruing to membership in the Employees' Mutual Benefit Association and Pension System of the Twin City Lines.

Members were secured for this new organization, and an election was held for the purpose of electing two representatives from each of the districts recognized as members of the association. Immediately following the election the executive committee met, and officers were elected and the new constitution of the Employees' Cooperative Association was adopted.

The assocation executive committee appointed a bargaining committee and also a social committee. This association, on September 15, 1934, entered into an agreement with the Twin City Lines, printed copy of which is enclosed.

AGREEMENT BETWEEN TWIN CITY RAPID TRANSIT CO. AND THE EMPLOYEES' COOPERATIVE ASSOCIATION OF TWIN CIY LINES SEPTEMBER 15, 1934

Memorandum of Agreement

This agreement, made in duplicate this 15th day of September 1934, by and between Twin City Rapid Transit Co., on behalf of itself and its several subsidiary companies and its and their successors and assigns, hereinafter for convenience called the "company", party of the first part, and the Employees Cooperative Association of the Twin City Lines, hereinafter for convenience called the "association", party of the second part, witnesseth:

ARTICLE I

The purpose of this agreement is to provide the best and most satisfactory service to the public and the best possible working conditions for the company's employees, having due regard to the economic operation of the company's cars and busses and the financial condition of the company and the orders of competent public authorities.

ARTICLE II

This agreement shall become effective on and after September 15, 1934, and shall apply to all employees of the company now or hereafter members in good standing of the association and shall continue until July 1, 1935, and thereafter from year to year unless either party shall give to the other at least 30 days prior to the expiration of any yearly period, written notice of a desire to negotiate a new contract or change in the existing contract.

ARTICLE III

Section 1. The company agrees not to discriminate against any employee that is now or may hereafter become a member of the association, and the company and its duly authorized officers and agents will not, directly or indirectly,

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interfere with or prevent the joining of the association by any employee of the company and will neither discharge nor discriminate against any employee by reason of connection with the association; nor shall there be any such interference or discrimination on the part of the assocation or its members, against employees who elect not to become members thereof, or who shall elect to become members of any other association, labor union, or organization. Peaceful persuasion outside of working hours shall not be deemed interference or discrimination within the meaning of this section.

SEC. 2. The company recognizes the association as representing those employee who may from time to time be members thereof in good standing, and shall, from time to time, upon request of the authorized representatives of the association, meet and treat with them on all questions and grievances that may arise during the life of this agreement affecting the employees from time to time represented by them.

ARTICLE IV

The company reserves to itself control of all matters pertaining to the operation and conduct of the business, including, among other things, the determination of the type and amount of equipment, machinery, and other facilities to be used, specifications of the uniforms to be worn, the number of employees required in any department, the routes and schedules of its cars, the standards of ability, performance, and physical fitness required, the rules and regulations requisite to safety, and all other matters pertaining to management and operation. With respect to any such matters, the company shall not be required to negotiate or arbitrate. It is understood, however, that in all such matters the company will consider, insofar as practicable, the convenience and comfort of its employees and will welcome suggestions from the association respecting same, and if in connection with any such matter a claim of discrimination on account of membership in the association is made in good faith by its authorized representatives, such claim shall be referred to arbitration in the manner specified in article VI hereof.

ARTICLE V

SECTION 1. The company reserves to itself, and this agreement shall not be construed as in any way interfering with or limiting its right to discipline its employees, but membership in the association shall not be made the basis of any disciplinary measures, nor shall such membership entitle any employee to preferential treatment.

SEC. 2. The grievances or complaints of any employee represented by the association relating to matters of discipline, or other matters where the employee deems himself aggrieved, may, within 5 days, first be taken up by the authorized representatives of the association, on his behalf, with his immediate foreman, and if mutually satisfactory adjustment cannot be made with such foreman, then with his division superintendent or department head, and thereafter, if desired, with the general superintendent; and in cases where no mutually satisfactory adjustment can otherwise be reached, the matter may be referred to the president of the company, whose decision shall be final and the company shall not be required to arbitrate same, except that if in connection with any such case a claim of discrimination on account of membership in the association is made in good faith by its authorized representatives, such claim shall be referred to arbitration in the manner provided in article VI hereof.

SEC. 3. If a case of discipline involves suspension or discharge of an employee, and, through the investigation hereinabove in section 2 of this article provided for, he is found not sufficiently at fault to warrant such suspension or discharge, he shall then be restored to his former place in the service of the company with his continuous seniority rights, and shall be paid for lost time at his regular rate of pay, *Provided, however*, That this section shall not apply to discharges incident to a reduction in the number of employees required for the company's operations.

SEC. 4. In all cases where employees are discharged to reduce the force required for any work at any station or department, they shall be discharged according to seniority in that work at that station or department except that the company may, after consultation with the authorized representatives of the association, give consideration to outstanding capacity and fitness. In like manner in all cases where additional employees are hired to increase the force

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required for any work at any station or department, they shall be hired from among former employees theretofore discharged in connection with reduction of such force according to seniority except that (1) the company may, after consultation with the authorized representatives of the association if time permits, give consideration to outstanding capacity and fitness. (2) Before hiring additional men for work at any station or in any department the company may transfer any available employees at other stations or departments. (3) The company shall not be required to give any consideration, in connection with the hiring of additional employees, to any former employee who has not filed with the employment department an address in the Twin Cities at which he can be reached, or to any employee who does not report to the employment department ready for work within 24 hours after a notice, addressed to him at such address, shall have been mailed by the company. (4) No consideration need be given to any former employee after he has been out of the company's service for 1 year. (5) The provisions of this paragraph shall not apply to employees hired for purely temporary work, nor shall anything in this paragraph prevent or prohibit the hiring by the company of any men available in cases of emergency which do not permit of compliance herewith.

ARTICLE VI

In the event of a failure to reach a mutually satisfactory adjustment of any question or difference which may arise respecting compliance with the terms and conditions of this contract, or the rights of any employee hereunder in a matter not otherwise expressly provided for, the same shall upon the written request of either party to this agreement be submitted to a board of arbitration in the following manner:

The company shall choose one arbitrator, the association shall choose one arbitrator, and, if the two so chosen cannot agree upon a mutually satisfactory adjustment, they shall select a third arbitrator; in case the two arbitrators first chosen fail to agree upon a third arbitrator within 10 days after their appointment, then, upon the application of either arbitrator on 24 hours' notice to the other, such third arbitrator may be selected by the chairman of the Minneapolis-St. Paul regional labor board, or if said board shall not be in existence, the person who was its last chairman.

The three arbitrators so selected shall meet as promptly as practicable in not to exceed 5 days and receive all evidence and testimony pertaining to the case that either party may desire to submit to them and shall thereupon render their decision and submit a copy of same in writing to both parties involved. The decision of any two of the arbitrators so selected shall be final and binding upon the parties involved. Each party shall pay the fees and expenses of the arbitrator selected by it, and the fees and expenses of the third arbitrator shall be divided equally between the parties hereto.

In the event of the failure of either party to appoint its arbitrator within 6 days after arbitration is decided upon, the party so failing shall forfeit its case.

ARTICLE VII

The company agrees that any employees, who are officers of the association or members of any committee thereof, shall be granted leave of absence of not more than 90 days in any 1 year, when so requested, or longer if the consent and approval of the president of the company is first obtained, to permit the performance of their duties as such officers or committee members, except in case of shortage of men, or unusual traffic demands, and then arrangements will be made to relieve such employees as soon as practicable. If such duties require continuous absence for not more than 90 days in any 1 year, or longer if the consent and approval of the president is first obtained, such employees shall, upon retirement from such offices or committee. be placed in their former positions with all seniority rights and ratings restored.

ARTICLE VIII

The association agrees that the employees now or hereafter represented by them will not participate in any sympathetic strike called for any cause and will not participate in any strike called for any purpose whatsoever, except for a refusal by the company to arbitrate as herein provided or its violation of the terms of a lawful award pursuant to such arbitration. There shall be no

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strike on account of any matter which the company is willing to submit to arbitration. During the continuance of this contract there shall be no lockout. "Lockout" is deemed to mean the refusal of the company to continue the employment of members of the association by reason of such membership.

ARTICLE IX

The association may maintain in any of the company's shops or stations a bulletin board for their exclusive use, but all notices, except notices of meetings and social occasions of employees, shall be subject to the approval of the president of the company.

ARTICLE X

SECTION 1. All of the rules, regulations, and practices of the company now in force and effect relating to wages, hours, and working conditions shall be and continue in force and effect during the life of this agreement and any extension thereof, save and except as hereinafter provided:

Whenever the association may deem necessary or desirable a change or changes in such rules, regulations, and practices of the company then in force and effect relating to wages, hours, working conditions, or to matters not herein specifically reserved to the company, they may notify the president of the company in writing of such desired change, in which case the officers of the company shall within 5 days meet with the authorized representatives of the association and endeavor to reach an agreement respecting the matter. If no agreement is reached within 30 days or such further time as both parties may agree upon, the matter may, if the parties so agree, be referred to arbitrators selected in the manner provided in article VI hereof upon such terms and conditions as the interested parties may agree upon.

SEC. 2. The association agrees that each of the employees now or hereafter represented by it shall render faithful service in their position and shall strictly observe all operating rules of the company and cooperate with the management of the company in the efficient operation of the system and in fostering cordial relations between the company, its employees, and the public.

SEC. 3. The company may from time to time, by bulletins or orders posted on the bulletin boards of the company, change any of such rules, regulations, and practices then in force and effect as may appear to it desirable or necessary, provided such changes do not violate the letter and spirit of this agreement.

ARTICLE XI

Nothing in this agreement shall require the company to do anything inconsistent with the charters, franchises, indeterminate permits, or laws under which it or its subsidiaries may from time to time operate or exist, nor anything inconsistent with the orders or regulations of any competent governmental authority or with the Code of Fair Competition for the Transit Industry.

In witness whereof the respective parties hereto have affixed their hand and seal by their fully authorized representatives therefor.

TWIN CITY RAPID TRANSIT CO.,
By T. JULIAN MCGILL, *Its President* (*First Party*).
THE EMPLOYEES' COOPERATIVE ASSOCIATION
OF THE TWIN CITY LINES,
By FRANK J. WAGNER, *Its President* (*Second Party*).

EMPLOYEES REPRESENTATION ASSOCIATION,
OF THE INLAND STEEL CO.,
INDIANA HARBOR WORKS,
East Chicago, Ind., March 30, 1935.

To the Senate Committee on Education and Labor:

We, the undersigned officers of the workmen's council and rules committee of the Employees Representation Association of the Inland Steel Co., located at East Chicago, Ind., have been authorized by the workmen's council to file a protest on behalf of this organization against the Wagner bill, S. 1958. This organization has a membership of 9,000 employees, some who are also members of outside unions.

Our body opposes the Wagner bill for the following reasons:

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1. The bill declares (sec. 1) that—

Denials of the right to bargain collectively lead also to strikes and other manifestations of economic strife, which create further obstacles to the free flow of commerce.

Further, section 15 of the bill, under limitations, states:

"Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike."

We object to those two sections because we do not agree that it is necessary to provide collective bargaining for the purpose of preventing strikes and at the same time encourage strikes.

2. This bill is in absolute opposition to the plan under which we are operating, and, in our opinion, it is a violation of section 7 (a) of the National Industrial Recovery Act.

We recognize the right and are in favor of the right to bargain collectively in the manner we choose and through any representation we might select. Our decision with respect to the form of organization and choice of representatives was reached without improper influence, coercion, or abuse upon the part of our employer. We, therefore, should not be governed by any outside organization, particularly one which is not legally responsible for its acts.

3. This bill according to section 9 (b) may force employees into closed-shop conditions, and make it possible that no one may be employed except members of a union, and make it illegal to agree that no one may be employed except nonunion men.

It is obvious that the purpose of such a one-sided provision is to establish by law the closed shop and that this is the issue in this legislation.

If the unions are given the power to dictate a closed shop, they have reached a point where they can say: "You must join our union or starve." This is against the principles of every true citizen. To belong to a union may be all right, but to say that the man who does not belong shall not be permitted to labor, is not in harmony with collective bargaining. Our plan of employee representation in no way conflicts with the right of employees to choose their own form of collective bargaining.

SUMMARY

Regarding our protest against this bill, which tends to undermine our plan of employee representation, which has been balloted on and accepted by the employees at an election held free from intimidation, coercion, or any restraint whatsoever from our employer.

At the time of the election held on June 1, 2, and 4, 1934, there were 8,870 employees eligible and available to vote. The total number of ballots cast was 8,073, or 91 percent voting; 77.1 percent of the votes cast favored adoption of our present plan of representation.

Our plan was adopted because it provides the most effective means of handling complaints.

The purpose of our plan is to provide a method where all complaints can be quickly heard and adjusted. Through this plan we have been able to adjust many complaints that could not be adjusted properly by any outside organization.

One of the many things that we have been granted is vacations with pay for all hourly employees. This, we know, would not come from an outside organization.

We are enjoying satisfactory relations with our employer and, therefore, urge that some consideration be given to our constituents, who are in no way interested in having their welfare and means of livelihood impaired by being compelled to abide by rules laid down by an irresponsible organization that continuously tries to infringe on their liberty to choose their form of collective bargaining.

In order to preserve our right to collective bargaining we urge that this bill be amended so that there can be no intimidation by outside labor organizations or defeated in its entirety.

Signed this 30th day of March 1934.

S. H. MOUNTAIN,
Chairman of the Workmen's Council.
JOHN J. BORKERT,
Secretary of the Workmen's Council.
JOHN BROSMAN,
Chairman of the Committee on Rules.

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CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., April 3, 1935.

CLERK COMMITTEE ON EDUCATION AND LABOR,
United States Senate.

DEAR SIR: I am enclosing a brief of the employees' representatives of the John A. Roebling's Sons Co., of Trenton, N. J., which they wish included in the record of the hearings on the labor disputes bill.

I shall appreciate it if you will do this and advise me.

Thanking you, I am

Very sincerely yours,

D. LANE POWERS.

APRIL 1, 1935.

DEAR MR. POWERS: May we, the executive committee of the board of employee representatives of the John A. Roebling's Sons Co. of Trenton and Roebling, N. J., be permitted to submit the following brief for consideration of your honorable Committee on Education and Labor?

We, the undersigned executive committee, representing 4,000 employees of the John A. Roebling's Sons Co., of Trenton and Roebling, N. J., wish to strenuously object to the enactment of Senate bill, S. 1958, introduced by Senator Wagner, for the following reasons:

Its enactment would promote conflict and industrial strife which would tend to seriously injure the satisfactory relations which now exist between us and the management.

It would tend to legislate out of existence the employee representation plan which we have enjoyed for the past 2 years, and which we wish to continue because it has provided a happy and successful working arrangement between us and the company.

We feel our best interests can be served by having employee and employer sit down in a friendly and constructive atmosphere, and with first-hand practical knowledge of our problems, work out a fair and equitable solution.

During the past 2 years we have had 104 cases considered and adjusted, dealing with wages, working conditions, pensions, sanitation, safety, prevention of accidents, housing and living conditions, and recreation.

Our representation plan has proved a most satisfactory method of collective bargaining through representatives of our own choosing and has been absolutely free of domination or influence on the part of our employees.

The elections have been carried on exclusively by the employees themselves and under rules decided upon by themselves.

Our plan establishes a continuous day-to-day channel of communication between the management and the men and all complaints are quickly heard and adjusted.

For the transaction of such business and the consideration of other matters in a regular monthly meeting held during working hours, the elected representatives are paid their regular rate of pay for the time lost, which does not exceed more than an average of 3 hours per month.

Any thought of representatives being influenced by such an arrangement is a misconception of the whole idea of the representation plan and anyone holding such ideas has a very low opinion of the character of the average American workman.

We representatives also hold meetings from time to time outside of working hours and away from the plant for which we receive no compensation from the company.

The meetings held during working hours and on the outside are never attended by representatives of management except as requested by the employee representatives.

More than 90 percent of the employees have voted in our elections and there is a very strong feeling among all against any change in our present plan.

We believe that as employees we should have the right to say who shall represent us, however, the bill would transfer this authority to the National Labor Board, who may certify as representatives men not actually elected by us as employees.

We believe that as employees we have the right to determine when elections of our representatives shall be held. However, the bill would also transfer this authority to the National Labor Board, who may call elections at their discretion and thus create endless confusion.

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We firmly believe our experience under the employee representation plan justifies its continuance without interference of a body such as the proposed National Labor Board or intimidation or coercion by a professional labor union as permitted under the Wagner bill.

As representatives of laboring men, we ask that you show your interest in us by opposing Senate bill, S. 1958.

JAMES DILLON, *Chairman.*
JAMES J. CANTWELL, *Secretary.*

BRIEF AND ARGUMENT OF WAGER FISHER, IN PROTEST AGAINST THE ENACTMENT OF THE BILL INTO A LAW

To the Education and Labor Committee of the United States Senate:

In reference to the above-titled bill and in protest against its enactment into law, it is respectfully submitted that the measure considered seriatim, dicloses the following faults, viz.:

TITLE

The purpose set forth does not indicate any object of rightful jurisdiction within the scope of the powers of Congress, granted to it by the people of the United States.

DECLARATION OF POLICY

Section 1: The wording of this statement is vague and indefinite, and is not such as should be clear and definite where the property and liberty of the people are involved. It clearly indicates a somewhat strained effort, by a combination of words and phrases, to bring this measure within the scope of a granted power of Congress. The effort is lacking in substance, in that—(1) It lays no ground of a recognized legal right that may be involved; (2) it assumes to invade and dictate the relationship of master and servant of the citizens of a State; (3) it is an interference with the citizen in the use of his private property; and (4) it lays restrictions upon the exercise of the liberty of the citizens in the right to follow their instincts and themselves dictate their conclusions involving their maintenance.

Section 2, clause 8: The use of the term "affecting commerce" is highly indefinite. No power has been granted by the people to the Government of the United States investing it with authority to intermeddle in the contractual relations of the citizens of a State, involving the relation of master and servant and rates of compensation. The clause concerning commerce in the instrument of Government being definitely enumerated as a power to regulate commerce among the several States.

SECTION 3, clause (a): Such a board which this bill seeks to create would be a multiplicity, and impose upon the citizens an additional burden of expense taken from their earnings. A similar agency of arbitration authority being already existent in the Department of Labor.

SECTION 8, clause 3: In this clause an employer of labor is barred from discriminating against any employee on account of membership in any labor organization. And in same clause, after the word "provided" the employer may be barred from employing anyone who is not a member of a particular labor organization.

SECTION 11: This section injects a penal responsibility enforceable in the United States courts, arising from the civil relations entirely of a voluntary nature between the citizens of a State.

SECTION 12: clause (a): The entire feature of this clause is already covered in the Department of Labor now being conducted in the executive department of Government, at the expense of and with the moneys of the citizens.

SECTION 13, clause (3): This is clearly an attempt to compel a citizen to be a witness against himself.

SECTION 14: This is a penal clause, subtly worded to broaden its scope, to be applied to and imposed upon the citizens of a State, inflicting penalties for matters arising from their civil relations.

CONCLUSIONS AS TO BILL

The bill is faulty in that it does not indicate any object of rightful jurisdiction in Congress. The employment and wage contracts between citizens of a

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State, which it obviously seeks to intermeddle in, is not within any granted power or authority of Congress.

The bill is faulty in that its purpose is vague and general and highly indefinite, in that it raises no duties and discloses no invaded rights, which are the proper subject for legislation affecting the property and liberty of the people. Their individual qualifications and abilities and the free and unrestricted self-direction of them in their application to their maintenance constituting their liberty.

The bill is faulty in that it falls within that class of legislation which is destructive to the general welfare in that its provisions do not flow in equality to all citizens, and in that it restricts the liberty and lays servitudes upon classes of citizens for the benefit of others.

The bill is faulty in that its object would violate the theory of our national or group existence by invading the liberty of the individual and impair his freedom to follow his own instincts—and conclusions—in the pursuit of happiness.

(*a*) It destroys the right to be his own master as to his services and the right in himself to fix his own compensation.

(*b*) It places in the hands of others than himself the right to curtail the avenues of, and restrict the opportunities for his employment and confers the right to impose a tax equivalent upon him incident to his employment.

The bill is unconstitutional in that the objects of it do not come within the granted powers of Congress.

To assume that it serves the general welfare would necessitate the elimination of all those concerned both directly and indirectly and included in its provisions—against whose interests—the burden of its clauses are directed and will lay.

The bill is class legislation in that its advantages are confined to a group in their civil and contractual relations.

It is obviously designed for the purpose of aiding and furthering the material interests of a group in their civil and contractual relations with others involved by its provisions, with all the burdens and disadvantages resting upon the other citizens involved.

It is special legislation in that it indirectly endows a group with the penal authority of government or the right to have it exercised against the others included in its provisions for the enforcement of their private contractual relations and against all others who do not choose to join or are not members of the favored group.

It will vest the right in a group to pervert the theory underlying our existence as a Nation by placing restrictions upon the liberty of the citizen to follow his own instincts and conclusions in the control of and the free use of his property and the free interchange of his services and the right to fix the values thereof with and for whom he may choose of the other citizens.

The bill is against public policy in that it assumes to throw the weight of government and the exercise of its penal authority into an interference of and into the private contractual relations of the citizens. If enacted into law it would break down the well-established principles of mutuality and reciprocation which are elemental to contracts—in that it gives advantages to one of the parties involved without any reciprocal and equivalent obligations and places obligations upon the others involved without any reciprocal and equivalent advantages. In the contractual relations imposed by its terms all the advantages accrue to one group without any obligations—while all obligations are laid upon the others without any advantages.

The bill is against public policy in that it would tend to encourage an intermeddling and interference with the peaceful relation of master and servant and the well-established rights and liberties and tranquility now enjoyed by each. It would, by the nurturing atmosphere which it radiates encourage the agents of groups to aggressive activities for the enlargement of their power and authority to interfere in and dominate the private contracts and contractual or civil relations existing between individuals embracing every avenue where the relation of master and servant exists.

It will consign to oblivion every element of the right to protest or resent and procure redress or damages for the malicious interference of contract where this right presently exists.

It will interfere with and destroy the right of directing supervision by employers over their employees and in this respect it will invade every theory that is elemental to the relation of master and servant, and tend to encourage insubordination and inefficiency.

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In those industries producing objects it will tend to create uncertainty both as to the quantity of production and its cost so that no man may anticipate with any degree of certainty what his product will cost. He cannot contract for future delivery with any measure of safety. It will hamper industry from every conceivable angle.

SUMMARY

In a general summary—this bill reviewed from its various angles and phases—would appear to be an attempt to invade the rights of the States and assume jurisdiction over the contractual relations of its citizens under color of promoting the general welfare and the regulation of commerce between the States.

As to the general welfare the Constitution was instituted by the people to promote it. This was undoubtedly its purpose as set forth in the preamble. The very existence of it with its guaranteed rights of the citizens and its prohibition upon management naturally reacting to the general welfare.

The right of Congress to legislate for the general welfare of the people, however, is an independent question. No such expressed power exists. Any right to do so under the power to provide for the common defense and the general welfare of the United States is open to argument. Thomas Jefferson very early, when Secretary of State, gave a most decided opinion that to construe this as a general power would nullify all restricted authority in Congress.

Independent of the merits of this opinion, the present bill is not designed by its terms in the interest of the general welfare in that its advantages are obviously meant to accrue to one group of citizens with the burden of such advantages reacting against and laid upon the others involved by its terms. Since the advantages and disadvantages are not given to all citizens in an equal and like degree, and on the theory that an advantage cannot be existent without some resultant servitude from which it must arise, the welfare is not general, and this removes it from that field.

As to the power to regulate commerce between the States—to bring the bill within the granted power under this clause would necessitate the broadening of the meaning of it to a point that might easily include every act of every citizen. It is highly questionable whether this was ever intended. It does not seem consistent with State rights.

The question of jurisdiction was apparently raised at an early date on a point similar to the one involved by this bill as to the extent of the authority under this clause and was brought to the fore in *Veazie* v. *Moor*, 14 How. 568–574, on the question, "Whether such authority attaches because products of domestic enterprise may ultimately become the subjects of commerce outside the State", Justice Daniel said:

"The phrase can never be applied to transactions wholly internal, between citizens of the same community, or to a polity and laws whose ends and purposes—and operations—are restricted to the territory and soil of such community. Nor can it be properly concluded that because the products of domestic enterprise in agriculture or manufactures, or in the arts, may ultimately become the subjects of foreign commerce that the control of the means—or the encouragements by which enterprise is fostered and protected—is legitimately within the import of the phrase 'foreign commerce' or fairly implied in the investiture of the power to regulate such commerce.

"A pretension as far reaching as this would extend to contracts—between citizen and citizen of the same State; would control the pursuits of the planter, the grazier, the manufacturer, the mechanic, the immense operations of the colleries, the mines and furnaces of the country; for there is not one of these avocations—the results of which may not become the subjects of foreign commerce and be borne either by turnpikes, canals, or railroads—from point to point within the several States—toward an ultimate destination."

Irrespective of whether this reasoning has been superseded, the soundness of it seems assured when we consider the liberty of the individual. To assume to possess jurisdiction on such slender threads—and speculative adventure would necessitate straying to the greatest possible lengths from the plain wording of the instrument giving the authority—the Constitution.

ARGUMENT

In considering the aspects of this bill, it would seem inadvisable, and neither the part of wisdom or expedience to inject this measure into the industrial

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affairs of our Nation at this time, with vast numbers of nationals unemployed. It cannot but disturb and distort, and further frustrate those economic laws which seek normal levels of pay in adjustment with the pay in all forms of service being performed in the industrial whole of the Nation, and upon which the maintenance of all, and their efforts are dependent and products and services absorbed, and in which the rights of all citizens are involved rather than that of groups.

It must not be overlooked that the very purpose of this bill is protective, and we may rightfully ask, Protective for whom and against whom? There is a natural assumption that there are citizens other than those interested in this measure who are involved with the problem of their maintenance whose avenues and instincts are at variance therewith, and who may chose to accept employment at terms other than that which is acceptable to those who are furthering this measure. Are we then to discriminate against these? That is not the proper function of government. Government may not legislate for the benefit of a class or group. Its mission is for the benefit of the people as a whole.

The bill is subtly drawn and is palpably biased to favor a group, and its aim is directed toward enforcing upon employers, by law, what is generally known as the "closed shop." It also seeks to lay upon Congress a legislative measure that is not within the powers granted to it by the people, and the enactment of which in turn lays upon the citizens the burden and expense of proving it to be such.

Turning from the major aspects of the bill and looking at the individual interests of all of our people as confronted with their maintenance, each as separate from the other, common sense and reason suggests to even the lay mind that in the circuitous passing around, the exchanging of the articles which they produce for the maintenance of all and which are shared in proportionately by each through distribution, that interferences by Government which further the desires of particularly groups to apportion to themselves a larger portion for the products which they produce constricts the portion of such products which the others may possess and throws the orderly functioning of the organism into eccentric and tends to confuse and slow up its operation. There can be no more prolific source for unemployment.

In closing, this measure is clearly a request to Congress to prescribe a rule of conduct for the people of this Nation, the authority to do which has not been given to them and which they do not possess.

I request the committee to reject this bill for the reasons given.

Respectfully submitted.

WAGER FISHER.
JOSEPH A. KEAN, *Attorney.*

[Telegram]

NEW YORK, N. Y., *March 25, 1935.*

COMMITTEE ON EDUCATION AND LABOR,
United States Senate:

The undersigned, General Cigar Co., Inc., operating factories and tobacco warehouses in the States of New Jersey, Michigan, Pennsylvania, Ohio, Indiana, and Connecticut, employing over 8,600 men and women, urge you most strongly to report unfavorably upon the Wagner labor-disputes bill, S. 1958. Instead of promoting equality of bargaining power, the present bill will produce unfair inequalities. While employers' interference with the exercise of rights granted employees by the bill is prohibited, employees are not protected from coercion by their fellow employees. The use of violence, falsehood, and intimidation by minority employee groups to secure their ends is not forbidden by the bill. Appeals to the proposed Labor Relations Board for investigations concerning the employees' choice of representatives and the ordering of reelections will creat uncertainty, tend unnecessarily to prolong disputes, and prevent amicable labor agreements. Further, the bill will tend to break down the friendly relations existing between employer and employee, since the broad restrictions of section 8 may well be deemed to prohibit friendly acts on the part of the employer. Successful maintenance of a business in these days of financial distress is at best difficult. To vest employees with the powers contemplated by this bill may well lead to demands so extravagant as to spell disaster for both employee and employer. We believe, therefore, that the bill will defeat, not promote, its own objectives.

GENERAL CIGAR CO., INC.,
FRED HIRSCHHORN, *President.*

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Brief

MARCH 28, 1935.

Hon. DAVID I. WALSH,
Chairman Committee on Education and Labor,
Senate Office Building, Washington, D. C.

GENTLEMEN: This brief, in opposition to the Wagner labor disputes bill, comes to you as the word of the 17 hosiery employees associations in Berks County, Pa., representing 7,000 employees out of a total of 13,000 in Berks County. We are opposed to this bill for the following reasons:

1. It denies the minority a voice in vital matters affecting their welfare.
2. It denies to workers their constitutional rights which, as asserted in the famous "7a", allow people to join any organization they see fit.
3. In effect, it would establish a monopoly in labor representation. Under existing conditions, it is evidently biased in favor of one organization.
4. It does not place any responsibility or limitations upon the majority, nor any restrictions as to tactics employed. In the event that the aforementioned organization (for whose benefit the bill is evidently designed) should be defeated in several instances, there is nothing to prevent their intimidating and "coercing" the majority.
5. It would release a gigantic attempt to secure the closed shop in industry. This would result in considerable unrest as workers resisted this regimentation.
6. The bill is not one of equity, even to the workers whom it is intended to benefit.

CARL S. WOLF,
RALPH B. RINGLER,
LEROY S. SPONAGLE,
WILLIAM I. SOUDERS,
LEROY FRITZ,
The Executive Committee.

BERKS COUNTY HOSIERY EMPLOYEES ASSOCIATIONS,
Reading, Pa., March 24, 1935.

To whom it may concern:

We, the undersigned officials of the various hosiery employees associations of Berks County, authorize these men to represent us in protesting the so-called "Wagner labor disputes bill" (S. 1958): Carl S. Wolf, Ralph Ringler, LeRoy Sponagle, William Souders, and LeRoy Fritz.

John E. Keim, president Fedden Bros. Association; Jack Smith, president D. S. & W. Association; Chares L. Wendt, president Junior Association; Rodney N. Wagner, president Laurel Association; Emily Mengel, president Busy Bee Association; Carl S. Wolf, president Berkshire Association; Laura S. Hertman, president Meinig's Association; LeRoy S. Sponagle, president Rosedale Association; William Souders, president Princess Royal Association; Lawrence Burdan, president Reading Full Fashion Association; Ralph Ringler, president Nolde & Horst Association; Melvin M. Kauffman, president Leininger's Association; Harold M. Starr, president Oakbrook Association.

STATEMENT OF JASON B. EVANS, RECORDING SECRETARY AND BUSINESS REPRESENTATIVE OF LOCAL UNION 569, PAVING DIVISION, INTERNATIONAL UNION OF OPERATING ENGINEERS

To the honorable Committee on Education and Labor of the United States Senate:

I oppose the enactment, in its present form, of Senate bill 1958, commonly known as the "Wagner bill", now pending in the Seventy-fourth Congress.

For 31 years I have been a member of organized labor, affiliated with local unions whose members are employed as paving engineers. During most of that time I have been an official, in one capacity or another, in labor unions. With this background, it is perhaps needless to say I thoroughly believe in the principle of collective bargaining. I also believe in the fundamental right of every man to work at the employment for which he is equipped, and in his privilege of selecting the labor organization with which he desires to affiliate.

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It is for the reason that Senate bill 1958 in effect denies to the individual these rights, that I oppose its enactment, in its present form.

It will be recognized by even the casual reader that this bill imposes no restraint of any kind or character upon labor organizations, and that it makes no provision for the protection of minorities. In fact, it places minorities at the mercy of ruthless majorities.

My 31 years of experience as a member of organized labor has convinced me that labor organizations have not reached a state of perfection. They are not always democratic organizations. Much too often they are dominated and controlled by individuals who are actuated by the desire to further their own selfish interests. The rights of the individual members for whose benefit the union is supposed to exist, are too often ignored or trampled under foot. The mechanics of labor organizations are such as to frequently enable unworthy persons to install themselves into positions of trust and leadership and to then perpetuate themselves in office.

The situation of my own local union, while not by any means an isolated one, well illustrates the point I make.

In 1927, the then president of the International Union of Operating Engineers found his popularity waning. At a convention of his union, he secured the adoption of a resolution allowing him to appoint a committee to revise the constitution. The persons appointed on that committee were immediately given lucrative jobs in the organization, by his appointment, so that as a result thereof he dominated the committee's action. He wrote into the revised constitution a provision placing in the hands of the president, control over all local unions. He immediately appointed supervisors of these various local unions, who managed and controlled the locals under his management and direction and in accordance with his desires. These supervisors became czars.

They fixed their own salaries and their own expense accounts. They told the members what dues they should pay, when they should work and when they should not work, and themselves negotiated the contracts of employment. Graft and corruption very frequently crept in. The members were not permitted to protest. Meetings were suspended. They had no voice in the organization which fixed the terms and conditions of their employment. They were as completely subservient to the supervisors as the serfs of old were to the feudal overlords. The supervisor appointed for local union 569 was a man who is now under indictment in the criminal court of Cook County, Ill. It was intolerable for free-born Americans to live under such conditions.

Local unions of engineers in Chicago protested to the general president. As a result, their charters were revoked by autocratic executive order without notice being given, charges filed, or hearing. They were thus denied membership in the international organization. They tried to run along as independent labor organizations, composed of honest, decent, law-abiding purposeful citizens. The international organization established a new local, under the supervision of the same supervisor. The former locals repeatedly requested affiliation with the international union, and their requests were repeatedly denied, they being always referred back to the same supervisor under whose domination they could not work and retain any measure of self-respect.

Since that time the International Union of Operating Engineers has not had a convention or election. The old president died. A new president was appointed by the executive board. The membership was not consulted and the union has, during all of those years, been conducted by self-appointed, self-perpetuating officials, and the men for whose benefit the union is supposed to exist, have been denied all representation. Their only privilege has been to pay from their meager wages the dues which their self-appointed masters exacted.

Local union 150 has not had an election. The appointed supervisor is still in control.

The International Union of Operating Engineers is affiliated with the American Federation of Labor in what is known as the "building-trades department"; also affiliated are carpenters, mechanics, asphalt finishers, common laborers, and various other crafts who have to do with paving and construction work. These various units affiliated with the American Federation of Labor, under directions of the building-trades department of that organization, have taken the position that their members shall not work on jobs where union men, belonging to labor organizations not affiliated with the American Federation of Labor, are employed. As a result, these various crafts have threatened to call, and have called, strikes for the purpose of forcing members

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of my labor union out of employment and preventing them from obtaining employment. In other words, they have conducted a secondary boycott for the purpose of denying union men the right to work and earn a living for their families.

This condition has been brought to the attention of the president of the American Federation of Labor. We have asked repeatedly for affiliation with the American Federation of Labor and have been refused on the ground that the International Union of Operating Engineers is affiliated with the federation and no other union composed of members of the same craft can be admitted. Dennis B. Zeigler, a member of local union 569, a man against whose character there was never even a suspicion, wrote several letters to the president of the American Federation of Labor, calling attention to the situation and asking recognition of his group of union men. His plea was scornfully rejected, and within a few days after the termination of this correspondence, he was assassinated in cold blood as he walked from his office to his home.

Engineers usually work in small groups. A paving job, a building project, or a sewer construction usually employees from 2 to 3 to 20 men on each job. On numerous occasions when it was attempted to force the discharge of our men by these secondary strikes above-mentioned, protests have been filed with the regional labor board. It disclaimed jurisdiction. They referred us to the National Labor Relations Board, where the matter has been pending, without action of any kind, for many, many months, because of its claim that there is no law for the enforcement of section 7 (a) of the N. I. R. A.

I should like to present to the committee the full detailed facts of the situation, supported by copies of the correspondence with the president of the American Federation of Labor; and by affidavits of the men who have been persecuted and starved because of their desire to belong to a representative labor union, and their refusal to affiliate with a racketeer, dominated organization controlled exclusively by self-appointed leaders. But the recital above made, without detail or embellishment, will certainly demonstrate the necessity of some provision in the act for the control and supervision of labor organizations and the protection of members against ruthless usurpation.

This cannot be accomplished by local enactment. Groups affiliated with the American Federation of Labor, and local political factions are too involved and too well entrenched to permit rectification from that source. Again, such control and supervision, if possible, would not be effective, for we have frequently been confronted with this situation: our members have been employed on a local project. The international union has demanded the discharge of our men, under the threat that unless their demand is complied with, work done by the employer in other States will be interrupted by strikes. Thus, in our complex industrial fabric supervision of labor unions, to be effective must be under the auspices of the National Government.

Let us consider for a minute the helpless situation that faces us by the enactment of paragraph 3 of section 7 of Senate bill 1958. Other provisions of the act preserves the right to strike, without qualification. Our men are employed on a paving job. The building trades department of the American Federation of Labor orders the laborers, the teamsters, the asphalt finishers, or any other craft, to refuse to work with our men because we are not affiliated with the American Federation of Labor. A strike is called. The contractor is losing the use of his equipment. The salaries of his foremen go on. His material has been purchased. The demurrage is piling up. A penalty perhaps is provided if the work is not completed within a definite time.

So he has no alternative other than to discharge our men. Men affiliated with the American Federation of Labor are called in. Their supervisor comes around. He insists that as a condition of work a contract be entered into that no engineer will be employed unless a member of his particular local union, and paragraph 3 of section 7 permits that and forecloses our men from ever obtaining employment.

We are then forced to starve, or to affiliate ourselves with the other union, regardless of how obnoxious to American ideals and principles it may be. And then, we have no assurance that we can get into the other union. Labor organizations very frequently close their charters, they charge prohibitive initiation fees, they impose conditions that cannot be met, and this act makes all of that possible.

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Men must be given a choice. Minorities must be protected. The right to live must not be exploited. This is a government of all of the people, not of those only who are affiliated with the American Federation of Labor.

Labor organizations ought to be democratic. The members should have the right to select their own officials and formulate their own policies. If only those who are members of organized labor have the right to work, and this act would force every employee in America into some union, then the union should be forced to accept every person into membership, under equitable, possible, and self-respecting conditions.

I therefore suggest that Senate bill 1958 be amended to include the following provisions:

1. That no labor organization shall be recognized as such, unless it is officered by men who have been selected by the membership, at an election whereat each member had a right to vote; that such election shall be under the Australian ballot system and under the supervision of the Government, so that a fair count may be had and so that ballot frauds may be prosecuted and punished. (It has been the practice in some labor unions for many years, for the officials to perpetuate themselves in office by fraudulent tabulation of ballots.)

2. That minorities shall have the right to bargain through representatives of their choice and that no employee shall be discharged from, or denied employment by reason of his failure to affiliate with any particular labor union.

3. That local autonomy shall be requisite in every labor union having local units, in regard to all matters of purely local concern.

4. That no strike shall be permitted by any labor organization, or the members thereof, for the purpose of forcing the discharge or preventing the employment of men belonging to any other labor union.

5. That no person of good moral character shall be denied membership in any labor union, except on the ground that he is not qualified to perform the work usually done by the members of that labor union, and if denied, he shall have the right to appeal to some Government body, whose decision shall be final.

6. That any federation of unions, county, State-wide, or national in scope, shall not deny affiliation to any other labor union which qualifies under this act.

It is my judgment that if an act, such as Senate bill 1958, is passed, it must be broad enough to encompass the entire subject. It must be explicit enough to protect the interests of all. It must guard against injury to any.

In closing, I call the committee's attention to the fact that a labor organization occupies a very important place in American life. In it men have invested their all—their most sacred possession—the right to work and earn a living for their family. This right should be protected with much more care and concern than wealth already accumulated. There is nothing so important as the sacred right to live.

I invite the committee's careful consideration of the suggestions made. I believe they are necessary for the protection of fundamental rights.

RHODE ISLAND WARP STOP EQUIPMENT CO.,
Pawtucket, R. I., March 22, 1935.

HON. DAVID I. WALSH,
Chairman Senate Committee of Education and Labor,
Washington, D. C.

MY DEAR SENATOR: Herewith find copy of lettergram dispatched by me today. It is difficult to understand why the Wagner labor disputes bill refrains from defining what constitutes a "strike", and what limitations are to be imposed upon individual and/or concerted action in furtherance of what the persons acting conceive to be a "strike." Any interference with a strike by whatever authority or person, whether a public official or not has always been anathema to organized labor. If my recollection is correct, President Cleveland was denounced for invoking the United States Army in the Pullman strike to insure the movement of United States mail. Calvin Coolidge was threatened with political extinction when he injected the authority of the Commonwealth of Massachusetts into the Boston police strike, to preserve public safety. What would have been the situation then had the Wagner labor disputes bill been in force? It seems to me that section 15 attempts to justify and legalize any alleged strike no matter against what person or authority aimed and regardless of the ensuing result.

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It has been pointed out to me that section 2, paragraph 2, exempts the United States, or any State or political subdivision thereof or any person subject to the Railway Labor Act as amended from time to time, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization. That exemption applies only to the direct impositions or exactions of the bill. If such were not the case there would be no need for section 15. It is because exemptions have been recited and established that it becomes necessary to emphasize that these exemptions do not qualify or in any way limit the right to strike. It seems fairly to follow that the right to strike is an inalienable right and any person whether representing the Government or any Government agency whether Federal, State, or of some subdivision, lays himself liable to the same criticism and reprehension that inevitably befalls any person acting in private or corporate capacity who attempts to interfere with any alleged strike, its effectuation or consequences.

Emphasizing this viewpoint, there was presented to the House, so I understand, a resolution, H. J. 141, the purpose of which was to prohibit or limit the use of United States Army equipment by National Guard units "for any purpose in connection with any labor dispute or controversy." Whether it was passed or not I do not know. The fact of its presentation indicates a disposition and perhaps intent to make the right to strike the dominant and absolute personal right.

Therefore, this very important right to strike should be most explicitly defined; and the nature and texture of the strike itself must be defined. To what extent can a body of strikers or of pseudo strikers go in attempt to enforce their demands? To what extent can Federal or other public authority be estopped from effective immediate action to insure public safety and to preserve public health? To what extent can a group of dissatisfied workers go to compell a majority who want to work to desist? According to my interpretation of reports of the recent so called "textile strike", disorders arose, not from any attempt to prevent people from striking, but from attempt to dissuade from working those who wanted to continue at their jobs undisturbed. Why should it be possible for any body of persons to impose its economic desires or convictions upon dissenters through instrumentality of motorcades and offer or implication of violence?

There are so many conceptions and implications concerning what constitutes a strike and what is involved in the right to strike that explicit definition is imperative. There is great hazard to society, to industry, to workers both organized and unorganized in the vague, indefinite understanding of everybody's rights and duties in a strike; where and when a strike ends and breach of peace begins and as to the unqualified right and obligation of constituted authority to curb and suppress any breach of peace regardless of whether or not the steps taken adversely affect the interests of strikers or of the employer who may be subject to the strike.

What is really required is the enactment of legislation that is patterned after or counterpart of the British Trades Disputes and Trade Union Act of 1927. That distinctly defines the various factors involved; it also establishes the right of nonstrikers to work without molestation.

Respectfully,

EDWIN C. SMITH, *President.*

[Telegram]

Pawtucket, R. I.

Hon. DAVID I. WALSH,
Chairman Senate Committee on Education and Labor,
Senate Office Building, Washington, D. C.:

Section 2 of Wagner labor disputes bill defines almost every factor in labor disputes. It omits definition of term strike. Section 15 guarantees practically untrammelled freedom in right to strike. What is right to strike? Is a strike the voluntary cessation of work or does right to strike include right to order those to quit who want to work, and is such right enforceable by motorcades or other show of forces? Can a strike be called or a strike order enforced which imperils, or may tend to imperil, or to obstruct the preservation of law and order and public safety, or the operation of any Government function? Can any Government authority, Federal, State, or municipal be restricted or restrained from invoking any usual agency of law enforcement, civil or military, to maintain public safety and continuity of Government

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operation in the face of a strike or of a strike order? If any persons are declared immune to interference or restraint in their actions of any kind those actions must be explicitly defined. A definition of strikes and strike activities forms the cornerstone of any labor disputes legislation

R. I. WARP EQUIPMENT CO.,
EDWIN C. SMITH, *President.*

KENNECOTT COPPER CORPORATION,
120 Broadway, New York, March 26, 1935.

Hon. DAVID I. WALSH,
Chairman Senate Committee on Labor and Education,
Washington, D. C.

MY DEAR SENATOR: By way of introduction, this corporation has, even under present depressed conditions in our industry about 7,000 employees, and therefore is vitally interested in all legislation pertaining to labor relations.

We strongly oppose the enactment of the so-called "Wagner labor relations bill", S. 1958, our objections to its provisions being as follows:

It will encourage and create industrial strife and will defeat the very purpose all should endeavor to accomplish, namely, harmony between employer and employee.

It legalizes the closed shop in industry. This has been rejected time and time again by both American labor and industry.

It nullifies all relationship between employer and employee based on employees' representation plans. Millions of workers throughout the United States have for years successfully conducted their relations with their employers through such plans or in an individual way, to the mutual benefit and respect of all concerned.

It establishes the doctrine of majority rule in representation for purposes of collective bargaining, and denies to a minority, no matter how large such minority may be, the right of representation.

It restricts the meeting on common ground of employer and employee. Nowhere does it restrict in any way coercion of employees by fellow employees or labor representatives.

We recommend, therefore, and strongly urge your committee to report unfavorably on this bill.

Respectfully submitted,

E. T. STANNARD.

LEEDS & NORTHRUP COOPERATIVE ASSOCIATION,
Philadelphia, Pa., March 27, 1935.

Hon. DAVID I. WALSH,
Chairman Senate Committee on Education and Labor,
Washington, D. C.

MY DEAR SENATOR: The proposed labor disputes bill (S. 1958) has attracted the attention of the employees of the Leeds & Northrup Co. A secret ballot taken among our 700 employees has shown them to be overwhelmingly in favor of the sentiments expressed in this letter. We are writing, therefore, to ask that you remove from the present bill all clauses which tend to hamper the form of employee organization which we have found peculiarly suited to our needs. We request that this letter be entered upon the record of the hearing now being conducted before your committee.

The Leeds & Northrup Cooperative Association is an organization composed of all employees of the Leeds & Northrup Co., Philadelphia, Pa., manufacturers of measuring instruments and control equipments. The Cooperative Association was formed in 1918, and has functioned without interruption since then. Every employee of the company is a voting member. The legislative and executive powers of the association are vested in a council composed of elected representatives. This council represents the employees in all their relations with management. Business considered by council in investigated through the medium of standing and special committees, appointed partially from council and partially from the association at large.

Council considers problems relating to wages, hours, safety, working conditions, and any other matters which concern the employees. It deals not only with

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general company policies which affect all employees but also with individual grievances. In addition, it supervises the operation of a pension plan, a savings plan, an unemployment relief fund, an educational plan and an athletic association. It is consistently consulted by management in the development of all policies affecting the employees.

The activities outlined above are conducted primarily for the benefit of the employees. However by promoting satisfactory relations between the employer and employee, they react indirectly to the distinct benefit of the company. Therefore, from the time the association was organized 17 years ago, it has been mutually agreed between employees and management that support of the association is a legitimate company expense. The company has always permitted meetings to be held on company time and has contributed other financial support. Membership in the association is without expense to the individual employees. Although the association receives financial and other support from the company, we wish to emphasize that our company makes no attempt to dominate the association, nor to influence its decisions in any way.

The election of officers and members of council is by secret ballot under the sole supervision of a committee appointed by council, without either direct or indirect influence on the part of management. Management is not represented at the meetings of council. Therefore, council's discussions and decisions are free from management influence. Council is at liberty to make recommendations based solely upon the employees' viewpoints, and has shown no hesitancy in so doing. Recommendations originating in council and counterproposals to management proposals have, in most cases, been accepted by management. In all cases where management has not immediately accepted a recommendation of council, a compromise agreement, satisfactory to the majority of the employees, has ultimately been reached.

The above is a brief description of the form of employee representation which we are anxious to continue. It appears to us that the proposed bill would prohibit or restrict our organization in certain respects as follows:

1. Section 8, paragraph (2) provides that it shall be an unfair labor practice for an employer to contribute financial or other support. Our experience proves that the contribution of financial or other support by an employer does not necessarily constitute domination or interference with the administration of an employee organization. We urge that some way be found to permit such support when rendered in good faith, without attempt at coercion.

2. As we understand section 9, paragraph (b), the National Labor Relations Board is granted unrestricted power to decide the type of collective bargaining organization by which a given group of employees shall be represented. Apparently the Board would be authorized to assign employees to one type of organization or another without consulting them, or without regard to their expressed wishes. We believe that the choice of representation should rest with each group of employees and not with the Board. In our own case, if we wish to maintain our own exclusive employee organization without outside affiliations, we believe that we have the inherent right to be so represented. We think the bill should be modified in such a way that choice of the unit or units for employee representation can be selected by each group of employees, without interference or dictation by the National Labor Relations Board.

In addition to the two clauses specifically cited, we believe that the interpretation of other clauses would tend to prevent our form of employee organization from functioning as it has in the past. Last year you questioned our delegates about the details of this method of representation. Its salient features are reviewed in this letter. The Leeds & Northrup employee plan received national recognition in 1931 when it won first award in a contest conducted by Forbes Magazine. It is known as "a model of employer-employee relationship." But more important, our employees want to retain it because they believe it gives them better representation than they could obtain by other means.

We again call attention to our long and successful record and ask that you find some way to modify the various provisions of the labor disputes bill (S. 1958) so that the method of employee representation which we have found so satisfactory can continue.

Very truly yours,

LEEDS & NORTHRUP COOPERATIVE ASSOCIATION,
J. E. WHISLER, *President*.

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LEVY & DRETCHKO,
Minneapolis, March 23, 1935.

Re: Wagner labor disputes bill.

Hon. DAVID I. WALSH,
Chairman Senate Committee on Education and Labor,
Senate Building, Washington, D. C.

MY DEAR SIR: I am addressing this letter to you as chairman of the committee before which is now pending the so-called "Wagner labor disputes bill."

On account of inability of making a personal appearance, I respectfully request that this communication be delivered to your committee and that the same be incorporated in the printed record of the hearings.

Minneapolis has had its share, and more, of major strikes and labor disturbances during the past year. Throughout these difficulties I represented the employers, hence I know whereof I speak.

The declared principle of the Wagner bill is "to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes."

The bill in its present form and without material necessary amendments, will not carry out the declared policy and purposes and objects of the bill, but on the contrary will lead, in my opinion, to a widening of the field of industrial conflict. It will not serve to promote amicable collective bargaining between employer and employee, but leaves the way open for constant misinterpretation, dissension, litigation, and intensification of bad feeling.

No doubt in these hearings the attention of your committee will be called to the inequitable provisions of the various sections and subsections of the bill directly and with marked attention to what the results would be if those sections were allowed to remain as they are, without amendment, clarification, or elimination.

It is not my purpose in making this written statement to your committee, to discuss these various sections separately, nor to impress my views as to the legality thereof, the workability of the various provisions, nor the advisability of present legislation couched in language such as is found in this bill.

My purpose and object in addressing you at this time is to request that this bill, if the same is finally approved in its present or an amended form, be substantially enlarged by making its provisions applicable to labor as well as to industry, so that a repetition of conditions referred to hereafter may never occur again, if industry and labor are to be required to operate under some form of administrative control such as is contemplated by this bill.

In its present form, and no matter how one reads its various provisions, we can come to but one conclusion, and that is that the bill is wholly one-sided, its provisions applying to employers alone, and having no application, obligation, restriction, liability, or responsibility resting upon the employees, binding them under any control by any of the provisions of the bill.

In the middle of May 1934, Minneapolis suffered from a vicious strike of truck drivers. After several days of practically civil warfare, the Minneapolis-St. Paul Regional Labor Board assumed a jurisdiction of the controversy, summoned employers and employees to a hearing before that board, conducted hearings and handed down a decree to settle that strike. After an inspection of the decree, the employers, 100 percent, accepted its terms and filed written consent to be bound.

The strikers, consisting of very few employees in number, but augmented by the ranks of unemployed, Communists, and other agitators, held a mass meeting where they unanimously rejected this decree of the labor board and refused to be bound by its terms. The strike continued for another few days.

Then the Governor of the State stepped into the picture and through negotiations with the employers and their attorneys, with the Governor acting as sponsor for the strikers, a stipulation for a modification of that decree was arrived at. A written sitpulation was signed by all the interested parties, filed with the regional labor board, and on May 31, 1934, the regional labor board handed down its amended decree, embodying the terms of the agreed stipulation, and by that amended decree, the strike was ended.

This stipulation and the order of May 31, 1934, contemplated, provided for, and fully covered each and every item that was in dispute at the inception of and during the strike. The order provided for returning men to work; provided for recognition of section 7 (a); contained provisions against discrimination on account of union membership, protected seniority rights, pro-

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vided for an arbitration of wage scale and conditions of employment, hours of labor were determined and agreed upon, and a continuance of a then-existing minimum scale of wages was agreed upon for the period of 1 year, or until or unless arbitration upward or downward took place.

The employers and the employees and the public hailed this stipulated adjustment as having fully settled and adjusted the difficulties with respect to this strike, and industrial peace and security for Minneapolis industry and Minneapolis citizens was expected to follow.

Notwithstanding this situation the Truck Drivers' Union later refused to recognize rulings and interpretations of the local board with respect to this order of May 31, and by agitation, mass meetings, false and malicious charges and propaganda, successfully induced and procured a second strike, commencing the middle of July 1934, lasting some 3 weeks and causing a disastrous loss to Minneapolis business institutions.

Within a day or two after the commencement of the July strike, the National Labor Relations Board sent representatives here. These representatives were informed of the existence of the order of May 31, were furnished with copies of same, were notified that the employers stood ready to carry out each and every provision of that order. They were further notified that the Truck Drivers' Union did not, in truth and in fact, represent the employees in a majority of the affected firms and they were asked to immediately conduct an election to determine representation.

These representatives threw up their hands and frankly admitted that there was no power in either the National Labor Relations Board or the local board to enforce the decree of May 31, 1934, nor to cause employees who had theretofore been receiving the benefits of that order, to comply with its terms and to carry out the same.

As a result of the lack of power existing in any board to compel both sides to an observance of this order, this strike in Minneapolis continued for more than 3 weeks. Again open warfare was present; martial rule was declared. Finally another adjustment, on practically the same identical terms, was worked out, and another order was made by the regional labor board; and then the second strike ended.

In addition to these truck-driver strikes, I have been before the regional labor board in connection with many other matters. My observation of the workings of this board leads to but one conclusion and that is that because the National Labor Board, its successor, the National Labor Relations Board, and the local boards have the handicap of lack of power, none of these boards can effectively or successfully handle labor disputes. Any attempted conclusion of a labor dispute by or through any of these agencies is simply temporizing with the situation and does not effectively settle the issues involved for either side.

Assuming that this present session of Congress will pass some form of labor disputes bill, I believe that such bill must, if it is to be of any value whatsoever, be equal in its force and effect as binding upon employer and employee alike, and that employees must be bound to a performance of their obligations under such a bill with the same force and effect and as firmly as the employers are bound. Employers are always bound by force of public opinion and by the threatened loss of the "blue eagle", but so far there has been no legislation presented which in any manner binds employees as well as employers, the sole object of attack being directed always against industry.

It is absolutely essential, if industrial peace is to be had and maintained, that this bill be so amended, modified and added to by proper and appropriate wording, so that it will provide for at least the following:

(*a*) Imposing the same restrictions, liabilities, and responsibilities upon employees and their representatives, as are chargeable to and bind the employers.

(*b*) Providing for such means of enforcement of its decrees as will enable both the national and local boards to carry out a strict enforcement of decrees against employer and employee alike, and which will prevent the flaunting of decrees and adjusted disputes if, as, and when agitators take over the situation and advise and compel employees to ignore or defy such decrees.

(*c*) Defining what are unfair labor practices on the part of employees, or their representatives, as well as on the part of employers.

(*d*) Stating in definite terms that nothing in any of the provisions of the act are intended to compel any employee to join a labor organization or any other organization.

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I sincerely trust that the members of your committee, having the interest of the public at heart, and earnestly desiring to maintain industrial peace, will take the Minneapolis history as a means and guide for proper additions, amendments, and supplements to this or some other bill which will tend to promote and not to destroy the harmonious relationship between industry and labor, which must exist if business recovery is to be had.

For your information I enclose herewith a pamphlet which was prepared some time shortly subsequent to the two truck drivers' strikes above referred to, and which gives the history of these strikes, and to which is appended the various decrees of the local regional labor board which, upon inspection, will bear out what I have stated in this letter.

I will thank you for the courtesy of seeing that this communication is presented to the committee and properly incorporated in printed hearings as above requested.

Yours very truly,

LEVY & DRETCHKO,
By SAM J. LEVY.

STATEMENT ON BEHALF OF MEMBERS OF THE LINOLEUM AND FELT-BASE MANUFACTURING INDUSTRY IN OPPOSITION TO THE PENDING NATIONAL LABOR RELATIONS ACT TO CREATE A NATIONAL LABOR RELATIONS BOARD

This statement, in opposition to this bill, is submitted on behalf of the members of the linoleum and felt-base manufacturing industry whose names appear on the list annexed hereto.

The various plants of this industry vary in size, some employing a small number of employees, others a greater number, and in some instances several thousand employees. Depending upon the location of the particular plant, the customs and habits of the employees, and all the surrounding circumstances, different methods of dealing with employment conditions, individually and collectively, have been used. These methods, developed through a long period of years, with great care and much expense, have adequately safeguarded the welfare of all the employees in every way. Problems affecting employment relations have been amicably and satisfactorily considered and determined, fairly and equitably to all interested parties.

* * * * * * *

This proposed bill has been carefully considered and the members of this industry are opposed to its passage for the reasons herein generally and specifically stated.

* * * * * * *

BASIC REASONS FOR OPPOSITION

This bill is legally invalid. Its provisions cannot be reconciled with any of the decisions of the United States Supreme Court interpreting those phases of the Federal Constitution defining and limiting the powers of Congress in matters relating to commerce, impairment or limitation of the freedom of contract, reasonable search and seizure, deprivation of property without due process, fair trial by jury, preservation of State rights and powers, and the general welfare.

The bill is unsound in theory and incapable of practical application. It is based upon irreconcilable and contradictory ideas and terms, such as compulsory collective bargaining. It seeks to outlaw certain acts and conduct on the part of employers, and such acts are condemned in terms not susceptible of definite ascertainment or specific performance and enforcement, except, if legal, that they can be enforced through an arbitrary decision of the labor board, whose decisions are to be final and conclusive on the facts, put into a record where rules of evidence to insure a fair trial need not be applied nor followed. The employer could not at any time know in advance whether he was acting in accordance with or in violation of this proposed law. He and his employees, who might not approve of the principles advocated by the representatives of the majority of employees, are deprived of virtually all freedom in dealing with employment conditions. The declaration of policy declares in favor of "full freedom", by the worker, of association, self-organization, and designation of representatives of his own choosing for collective bargaining. The bill specifically limits that "full freedom" and individual choosing, by subjecting the

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freedom and judgment of employers and minority employees to the dictates of the representatives of the majority of the employees. The board has the power to determine which organized unit shall be recognized for purposes of collective bargaining, and under its own rules of procedure may certify what representatives have been designated or selected.

The declaration of policy in section 1 of the bill does not contain an accurate statement of the true contents and full purport of the provisions of the bill itself. They are in conflict. It is not merely a measure to establish and preserve equality of opportunity in bargaining, through the protection of the right to fairly and freely organize. It is not simply an attempt to compel parties to negotiate (bargain) collectively; in operation it is designed to force the making of agreements. The unfair labor practices apply only to the employer; no conduct of employees or their organizations, as regards their interfering, restraining other employees in associating, and organizing for collective bargaining purposes, and selecting their own representatives, is defined as fair or condemned as unfair.

The bill would not equalize the bargaining power of the respective parties. It would not promote the free flow of interstate commerce, but would engender strife and discord, and create a fertile field for endless litigation. I undertakes to apply compulsion where coercion cannot be applied, and that too in an illegal manner.

COMMERCE

The decisions of the United States Supreme Court are unanimous to the effect that factory labor is intrastate commerce, and is exclusively within the jurisdiction of the States and not the Federal Government. It is urged that collective bargaining is an instrumentality necessary to provide for the free flow of interstate commerce, and hence within the power of Congress to regulate, under the clause of the Constitution which gives Congress power to regulate interstate commerce. An instrumentality which is a necessary part of interstate equipment and essential to its operation, or an operation which necessarily and substantially affects admittedly interstate transactions, will be regarded as a part of the interstate commerce. But that which is incidental to it, or remote, has been reserved to the States.

The United States Supreme Court, without exception, has said that manufacture and mining are not interstate commerce. The *Shreveport case* and the so-called "*Packers cases*", contain nothing to the contrary.

Section 2, paragraphs (6) and (8) of the bill define "commerce" and the term "affecting commerce." These definitions add nothing to the power of Congress. Since *Gibbons* v. *Ogden*, decided by Chief Justice John Marshall in 1824, 110 years ago, the Supreme Court has decided innumerable cases involving this same issue as to what "affects" interstate commerce. The character of interstate commerce cannot be changed by adding such a qualifying word. There is nothing bizarrely new in the word "affects" in this connection. To be candid, and in the interest of passing a valid law, one should look askance and with misgivings upon any proposal which plumes itself on novelty, when dealing with the constitutional characteristics of interstate commerce. "Truth changes her garments frequently (like every seemly lady), but underneath the new habit she always remains the same."

Strikes are not new; it is not proposed to outlaw them; nor prevent them by compulsory arbitration or compulsory agreements covering issues out of which a strike might result. It is proposed to induce and limit collective bargaining, and thereby, as claimed, obviate a possible strike or lockout which would possibly prevent continued manufacture. This possible cessation or impairment of manufacture is what the bill vaguely terms as creating "further obstacles to the free flow of commerce", and that the proximate cause is a refusal to negotiate (bargain) collectively and exclusively with designated representatives of a majority of the employees. Certainly, if goods are not produced they cannot later be shipped across State lines. Section 15 of the bill says: "Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike." That is reassurance in the broadest terms of an existing right. There is nothing about the right to close a plant, yet, if it were done, is there any assurance that the employer would not be charged with "interfering, restraining, or coercing employees in the exercise of their rights to organize, choose representatives for collective bargaining, and other mutual aid or protection", as an unfair labor practice?

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There is no real or well-founded apprehension that there will not be an abundance of goods produced and shipped, if those who are willing to work are permitted to do so without interference. The whole idea about compelling collective bargaining in employment relations to provide for the free flow of commerce, is too remote and speculative to be seriously considered as being a part of interstate commerce.

This bill is based upon the assumption that the denial of the opportunity to bargain collectively would be the cause of strikes which would interfere with the free flow of interstate commerce by preventing continued manufacture of goods. This is precisely the view adopted by the Federal Circuit Court of Appeals in the *United Leather Workers International Union* v. *Herkert et al.* (1922) (284 Fed. Rep. 446), but which was reversed by the United States Supreme Court. The conspiracy charged was that by too many pickets, assaults, threats, and intimidation of employees, the plaintiffs were prevented from manufacturing and selling goods in interstate commerce. The Federal Circuit Court of Appeals stated:

"It is contended that because manufacture is not commerce, and is not interstate commerce, the restriction or prevention of the manufacture of articles which by interstate commerce contracts and transactions, sellers have agreed to sell, make, transport to, and deliver in other States, and the prevention of existing interstate commerce in such articles in this way is not remediable by Federal courts under the antitrust act.

"It is true that manufacture alone is not interstate commerce. But it is equally true that when manufacture becomes an essential part of an indispensable step in the execution of an interstate commerce contract or transaction, or in the continuously flowing current of interstate commerce, as such manufacture was and is in this case, it becomes a part of, or step in, that interstate commerce to such an extent that a Federal court of equity is vested with the power and is subject to the duty to enjoin the execution of a combination or conspiracy to prevent, or practically prevent, the performance of such contracts, or to prevent or drastically restrict such interstate commerce by preventing the manufacture which constitutes one of its indispensable, intermediate steps or parts. While manufacture alone is not interstate commerce, neither is buying or selling, or contracting to buy or sell the goods, or loading or packing or shipping the goods, when considered by itself alone, interstate commerce; yet, each and all of these may become parts of and steps in interstate commerce, and when they shall become the restriction or prevention of these steps, which has the necessarily intended, direct and inevitable effect of stopping or drastically restraining that interstate commerce by the execution of the conspiracy to restrain or destroy it, may be lawfully enjoined by the Federal court."

Upon an exhaustive review of the above decision of the Circuit Court of Appeals, the United States Supreme Court, through Chief Justice Taft, reversed the above decision of the lower court and stated the following ((1924) 265 U. S. 457):

"While the bill averred that the defendants had instituted a boycott against the complainants and were prosecuting the same by illegal methods, there was no evidence whatever that any attempt was made to boycott the sale of the complainants' products in other States, or anywhere, or to interfere with their interstate shipments of goods ready to ship.

"The sole question here is whether a strike against manufacturers by their employees, intended by the strikers to prevent through illegal picketing and intimidation, continued manufacture, and having such effect, was a conspiracy to restrain interstate commerce under the Antitrust Act because such products when made were, to the knowledge of the strikers, to be shipped in interstate commerce to fill orders given and accepted by would-be purchasers in other States, in the absence of evidence that the strikers interfered or attempted to interfere with the free transport and delivery of the products when manufactured from the factories to their destination in other States, or with their sale in those States.

"We think that this question has already been answered in the negative by this Court. (Citing *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344.)

"This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce, by the illegal or tortious prevention of its manufacture is ordinarily an indirect and remote obstruction of that commerce. It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price, or discriminate as between

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its would-be purchasers that the unlawful interference with its manufacture can be said directly to burden interstate commerce.

"The record is entirely without evidence or circumstances to show that the defendants in their conspiracy to deprive the complainants of their workers were thus directing their scheme against interstate commerce. It is true that they were, in this labor controversy, hoping that the loss of business in selling goods would furnish a motive to the complainants to yield to demands in respect to the terms of employment; but they did nothing which in any way directly interfered with the interstate transportation or sales of the complainants' product.

"We concur with the dissenting judge in the Circuit Court of Appeals when, in speaking of the conclusion of the majority, he said: 'The natural, logical, and inevitable result will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to Federal jurisdiction provided any appreciable amount of its product enters into interstate commerce.'

"We cannot think that Congress intended any such result in the enactment of the Antitrust Act or that the decisions of this court warrant such construction.

"Decree reversed." ((1924) 265 U. S. 457.)

Also, *United Mine Workers* v. *Coronado Coal Co.* ((1922) 259 U. S. 344):

"Coal mining and the manufacture of goods is not interstate commerce, even though the coal or goods may be shipped from one State to another. Interruption of coal mining is not an interruption of interstate commerce."

The Supreme Court has been extremely favorable to labor in passing upon the more than 100 labor cases submitted to it. This is true also as regards the numerous acts passed by the States affecting conditions of employment. (See "Congress, the Constitution, and the Supreme Court", by Charles Warren, pp. 223–245.)

However, the Supreme Court has been consistent and firm in not relaxing the rule that manufacture is not interstate commerce. This is due to the fact that once the barriers are broken down, there is no force to the argument that further infringements upon the rights guaranteed to the States by the Constitution would not result. Violation of State rights is the ground upon which most of the cases have been decided by the Court. Fifty-three acts of Congress were declared unconstitutional in 135 years (1789 to 1924). From 1789 to 1864, 75 years, two acts were held invalid. From 1906 to 1924, 19 years, 23 laws were held to be unconstitutional. During the last few months two acts of Congress were held invalid; as many as during the first 75 years of the country.

The increase in the last 20 years in the number of acts declared unconstitutional has been due largely to the vast increase of Federal interference into matters of State concern by Federal statutes. The Supreme Court has passed upon the constitutionality of State statutes involving labor legislation, and has upheld those statutes in more than 60 of such cases, and the variety and radical nature of many of those statutes, as sustained, is quite remarkable.

As illustrative of the importance which the Court has attached to the necessity of preserving the rights of States to legislate concerning conditions of employment in factory, the following may be cited:

"Every feature of our Government, both State and National, proved that the people were sensible of restraining as well the headlong impetuosity of the multitude as the inordinate ambition of the few. Where such restraint was not improved, there was no genuine liberty." (John Randolph, of Virginia, in the House, Nov. 13, 1807.)

"No action (Bill of Rights) ever taken by Congress is more clearly the result of a general demand for limitations on legislative power, to be enforceable through a judiciary. The genesis of this National Bill of Rights should be most carefully studied by liberals and radicals in this country today, for they are the very persons most likely to stand in need of the protection intended to be guaranteed by this portion of the Constitution." ("Congress, the Constitution, in the Supreme Court", by Charles Warren, p. 76.)

"It (the Constitution) was an economic document, drawn with superb skill, by men whose property interests were immediately at stake; and as such, it appealed directly and unerringly to identical interests in the country at large." ("Economic Interpretation of the Constitution", 1913, by Charles A. Beard, p. 188.)

"Men on all sides contended that, while the first object of the Constitution was to establish a Government, its second object, equally important, must be

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to protect the people against the Government. That was something which all history and all human experience had taught." ("Congress, the Constitution, and the Supreme Court", by Charles Warren, p. 79.)

"Having protected themselves by specific restrictions on the power of their State legislatures, the people in this country were in no mood to set up and accept a new National Government, without similar checks and restraints." (Id., p. 79.)

"The declaration of the Constitution against the power of a State is paramount, not to be * * * bent to some impulse or emergency because of some accident or immediate or overwhelming interest which appeals to the feelings and distorts the judgment." (Holmes, J. dissenting, in *Northern Securities Co.* v. *United States* (1904) 193 U. S. 400.)

This last quotation applies with equal force to the limitations upon the power of the National Congress, and history and court decisions are replete with instances designed to limit authority in the National Government by preserving to the States the rights guaranteed to them.

"An elective despotism was not the Government we fought for." (Thomas Jefferson.)

"In every government there must be somewhat fundamental, somewhat like a Magna Carta which would be standing unalterable * * *. To what assurance is a law * * * if it be in the same legislature to unlaw it again? Is such a law likely to be lasting? It will be a rope of sand; it will give no security, for the same men may unbuild what they have built." (Oliver Cromwell, 1654.)

"Chief of the possible evils of a republican form of government is the danger of the majority oppressing the minority." (George Mason, of Virginia, in the Federal Convention.)

If this bill be valid, Congress could regulate all business, and State governments would be almost superfluous. For the effect of this bill the following United States court opinion is important:

"No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufacture and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation * * *. If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufacturers, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest or the cotton planter of the South plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be local in all details of their successful management: The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement toward the establishment of rule of production in this vast country, with its many different climates and opportunities, could only be at the sacrifice of the peculiar advantage of a large part of the localities in it, if not of every one of them. On the other hand, any movement toward the local, detailed, and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question. Nor this alone. Even in the exercise of the power contended for, Congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. These instances would be almost infinite, as we have seen; but still there would always remain the possibility, and often it would be the case, that the pro-

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ducer contemplated a domestic market. In that case the supervisory power must be executed by the State; and the interminable trouble would be presented, that whether the one power or the other should exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the State governments, and more provocative of conflicts between the General Government and the States, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine." *Coe* v. *Errol*, 116 U. S. 525.)

"It can hardly be said that a combination in restraint of what is interstate commerce does not directly affect and burden that commerce. The error into which the circuit court fell, it seems to us, was in not observing the difference between the regulating power of Congress over contracts and negotiations for sales of goods to be delivered across State lines, and that over the merchandise, the subject of such sales and negotiations. The goods are not within the control of Congress until they are in actual transit from one State to another." (*United States* v. *Addyston Pile & Steel Co.*, 85 Fed. 271.)

(Justice Taft reviewing *U. S.* v. *Knight*, 15 U. S. 1, and *Kidd* v. *Pearsons*, 128 U. S. 1.)

RIGHTS OF EMPLOYEES

Section 7 of the bill gives employees the right to organize and bargain collectively through representatives of their own choosing. New legislation is not necessary for the creation of those rights on behalf of the employees. However, those general rights, as set forth in this section 7, are limited by succeeding provisions of the bill, particularly section 9 (a), which prevent employers and minority employees from bargaining collectively except through the representatives of the majority of the employees.

Section 8 defines unfair labor practices and these unfair labor practices apply only to the employer; they do not apply to any of the employees or employee organizations. It is therefore declared unlawful for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 * * * to dominate or interfere with the formation or administration of any labor organization or contribute financially or give support to it * * *. By discrimination in regard to hire or tender of employment or any term or condition of employment to encourage or discourage membership in any labor organization. To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act." A proviso clause permits employees or their representatives to confer with an employer during working hours without loss of time or pay. The employer is financially and otherwise responsible for his own acts and conduct. But, as a practical matter, labor unions are immune and cannot be held to strict accountability for any unlawful interference, restraint, or intimidation which might be exercised and applied to employees who may be in the minority or may not agree with the views of those claiming to represent a particular employee organization. The acts and conduct made unlawful when indulged by the employer are indefinite and uncertain and not susceptible of orderly enforcement. Complaints may be registered with the National Labor Relations Board by any person, whether well founded or without foundation. Inevitably, the condemning as unlawful by any such vague and indefinite terms will result in discord, distrust, industrial unrest, and possible disturbances and lead directly to interminable investigations and litigation.

POWERS OF THE BOARD

The powers of the Board, ostensibly, are to insure equality of bargaining power through representatives of the employees selected through the exercise of individual judgment and achieve these results through fair labor practices by attempting to prevent unfair labor practices by only the employer. The bill assumes unfairly and unreasonably that the employer alone can be guilty of such unfair labor practices. In the exercise of such ostensibly limited powers of the Board the bill provides for other great and unnecessary powers.

Section 9 (a) definitely establishes the majority-rule principle by providing that the collective bargaining shall be by the representatives of the majority of the employees in a unit appropriate for such purposes, and they shall be the exclusive representatives of all the employees in such unit for the purpose

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of collective bargaining in respect to rates of pay, wages, hours of employment, or other basic conditions of employment.

The Board is given power to determine the unit appropriate for the purpose of collective bargaining and the Board may investigate and certify the name or names of the representatives that have been designated or selected.

The Board is given power to issue complaints, pass upon the charges filed, and require an employer to appear before the Board or any agency it may designate within not less than 3 days after the service of the complaint. In the conducting of such hearings the Board or designated agency is not required to observe the rules of evidence prevailing in courts of law or equity. Upon the evidence submitted the Board can make its findings of fact and issue orders to cease and desist from the practice complained of. In addition, the Board may issue affirmative orders requiring the doing of such things as it may deem necessary to effect the purposes of the act, including the making of restitutions and further requiring the making of reports from time to time, showing the extent to which the adjudged guilty employer has complied with the orders issued.

Amendment VII of the Constitution is:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law."

This bill permits an examiner to disregard rules of evidence and thus confront an employer with hearsay evidence and rumors and compel him, based upon findings of fact by the Board, from which findings of fact there is no appeal to any court, to make payment of money. This is not due process of law within the meaning of the Federal Constitution and affords no opportunity for a jury trial. It is in direct conflict with the above-mentioned seventh amendment to the Federal Constitution.

These orders of the Board are unenforceable through the Federal courts. The bill expressly provides: "The findings of the Board as to the facts, as supported by evidence, shall be conclusive." This is not a case of delegation of authority to an administrative agency or quasi-judicial body, merely for the purpose of gathering facts. It is empowering a Board with judicial powers to issue orders and decrees and enforce the collection of money without such trial as is specifically required by the Federal Constitution.

INVESTIGATORY POWERS

The investigatorial powers of the Board are most remarkable. The Board, or its agents, will have access to and the right to copy any evidence which it may deem pertinent, subpena witnesses, require production of facts, administer oaths. Such attendance of witnesses and production of evidence may be required from any place in the United States at any designated place of a hearing. Contumacy or refusal to obey any such subpenas may be punished as a contempt of the court having jurisdiction over the matter.

In addition to all the above, several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

It is not constructive to pass a law so comprehensive in scope and revolutionary in character as this bill, which later necessarily will be declared invalid. Industry is confused, and is reluctant to move forward and the passage of this bill would further tend to destroy confidence in the future. The conclusion is inescapable that this proposed bill is intended to extend the regulatory powers of Congress over employment conditions, the control of which is exclusively within the rights guaranteed to the States by the Federal Constitution. It is an attempt, through the mere statement of a conclusion, to declare as being interstate commerce, operations which are not a part of interstate commerce.

It is class legislation; it arbitrarily discriminates between employers and employees. The definitions of unfair labor practices, applicable only to employers are particularly obnoxious, and, unfairly and without justification, assume that the practices condemned have been indulged only by employers and not by employees, their unions or organizations. It is not conducive to industrial peace to outlaw certain conduct in vague and equivocal terms. Under the definitions of unfair labor practices, every employer would be required to deal with

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his own employees regarding labor problems at his peril. By failing to impose any restrictions on labor organizations in their negotiations and dealings with other employees and their employers, the bill does not deal with the most important phase and element in the cause of industrial strife.

The arbitrary and discriminatory features of the bill are peculiarly objectionable and, instead of promoting, would positively impede the free flow of interstate commerce. In order that there may be due process under the law, it is necessary that there shall be a definite and ascertainable standard of conduct to which it is possible to conform. In a most vigorous opinion, rendered by the late Chief Justice White of the United States Supreme Court (*U. S. v. Cohen Grocery Co.*, 255 U. S. 81), a Federal law, which prohibited in general terms profiteering during the war, was held to be unconstitutional. That law provided that it should be unlawful "to make an unjust or unreasonable rate or charge in handling or dealing in or with any necessaries." The Court held that it did not establish an ascertainable standard of guilt nor inform accused persons of the nature and cause of the accusation against them. It penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the Court and the jury. Such a statute is repugnant to the due process clause of the Constitution. The unfair labor practices of this bill are as equally indefinite and vague and do not prescribe any ascertainable standards of conduct. An employer would never know whether his customary and normal conduct might be regarded as an interference or restraint within the meaning of these defined unfair labor practices.

The broad investigatorial powers of the Board and its agents are especially objectionable. Under the slightest pretext or claim of violation of the provisions of this bill, any employer can be subpenaed and required to produce all his papers, books, and documents, which the Board may deem pertinent. Many reports, highly confidential in character, are required under various laws to be submitted by employers to different departments of the Federal overnment. Under this bill, the National Labor Relations Board, when directed by the President, may require any of those departments to produce any documents and records filed with them by employers, which the Board may consider relevant to the matter being investigated by it and expose such highly confidential and personal records in a public hearing.

This bill would not encourage collective bargaining, but would discourage it. Nor would it establish equality in bargaining relations. The imposition of the will of the representatives of the majority of the employees upon the minority of the employees is a flat contradiction of the declaration of policy of this act. Under that majority rule "the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing" is not protected as the policy expressly states. That right of such "full freedom" is denied and taken away from the worker by section 9 (a) of the bill.

It is contrary to orderly government by law to clothe any board or tribunal with powers of investigation, prosecution, and judicial decision. This Labor Board may make its own rules of procedure, gather facts, disregard rules of evidence, issue injunctions and restraining orders, issue orders requiring the doing of an affirmative act, including payment of money, and the Board's decision on the facts is final.

For the reasons above set forth, this bill does not provide an appropriate method for encouraging industrial peace nor the achievement of the purposes and objects claimed for it.

Respectfully submitted.

LINOLEUM AND FELT BASE MANUFACTURERS ASSOCIATION,
WILLIAM J. MATTHEWS, *Counsel.*

NEW YORK, N. Y., *March 27, 1935.*

MEMBERS OF THE LINOLEUM AND FELT BASE MANUFACTURING INDUSTRY

Armstrong Cork Products Co., Lancaster, Pa.; Bona Fide Mills, Inc., Brooklyn, N. Y.; Carthage Mills, Inc., Carthage, Cincinnati, Ohio; Congoleum-Nairn, Inc., Kearny, N. J.; Delaware Floor Products, Inc., Wilmington, Del.; J. C. Dunn & Co., Camden, N. J.; Mannington Mills, Inc., Salem, N. J.; The Paraffine Cos., Inc., San Francisco, Calif.; and the Cott-A-Lap Co., Inc., Somerville, N. J.; Sandura Co., Inc., Philadelphia, Pa.; Sloane-Blabon Corporation, New York, N. Y.

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LOUISVILLE, KY., *March 24, 1935.*

Hon. DAVID I. WALSH,
Senate Office Building, Washington, D. C.

DEAR SENATOR WALSH: At a special meeting held on March 23, 1935, the 18 members of chapter 112, Louisville Gas & Electric Co. Employees' Association, adopted unanimously a resolution stating their disapproval of and opposition to the Wagner labor relations bill.

The members have instructed me to inform you of their sentiments.

Respectfully yours,

PAUL A. FRANK,
Secretary, Chapter 112, Louisville Gas & Electric Co. Employees' Association.

Honorable Chairman, and Members of the Senate Committee on Education and Labor:

GENTLEMEN: My name is Sidney E. Cornelius. I am the manager of the Manufacturers' Association of Hartford County, in Connecticut. I appear here in the stead of more than 100 manufacturers in Hartford County to voice for them their individual, strenuous opposition to Senate bill 1958, known as the "Labor disputes bill."

These manufacturers employ today more than 46,000 workers whose best interests would not be served by the passage of this measure.

Just about a year ago this committee extended to me the courtesy of listening to me at a hearing to oppose a bill which in substance and implication was the same as that now before us. That measure did not become law.

We feel that it is unfortunate that you should be subjected now to what amounts to a rehearing, for it must follow, naturally, in our opinion, what was wrong with the bill in principle a year ago is still wrong and objectionable. Our arguments, therefore, in general will appear to be reiteration.

However, we feel that circumstances, during the course of the past year, have provided us with substantial proof that much that we prophesied has come to pass as the result of the administration of Public Resolution No. 44, which created the present Labor Relations Board. It is our opinion, and the record bears us out, that the present board, in spite of its definitely limited scope of activity has exercised the powers which the Wagner bill of a year ago would have bestowed upon it.

Outstanding among all of the board's unauthorized decisions is that which prescribes that representatives of the majority of workers in a plant shall arbitrarily be declared the representatives of all employees. The proposed measure, which we oppose, would make this ruling law.

We respectfully urge upon your committee reflection and consideration of the strife and turmoil which that decision by the present Labor Board has occasioned throughout the country. I am fully cognizant of and sadly impressed by the instances that have occurred in my own community. This, we would point out, is so in spite of the fact that the Board's right to make such decisions was in doubt even in the minds of the union labor groups which would profit most by such a ruling, and was never accepted by members of the legal fraternity and the employers to whom they were advisers. Were that statute made to accord with the practice of the Board, the disturbances would be intensified and multiplied.

We are facing a grave crisis. I believe that frankness will serve your purpose best. I believe, gentlemen, you would prefer to have our honest opinions and views rather than innuendo.

The American Federation of Labor girded itself nearly 2 years ago for a wholesale campaign of organizing the independent worker. Section 7 (a) of the National Industrial Recovery Act was interpreted by it to serve that purpose. In spite of strenuous effort, the success of the campaign was not marked. The numerical increase in the federation's ranks announced at its last convention substantiated this. The individuality and independence of the American workman was not to be overcome by cajolery, soap-box oratory, or even insistent misrepresentation of the meaning of section 7 (a). Then the Labor Board came to the federation's assistance.

When employers, in endeavor to abide by the spirit of the law, met with committees and groups claiming to be the chosen representatives of employees, they accepted them as at least representing some of the employees and

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negotiations followed. Then these committees or groups, coached by organizers of the Federation of Labor, sought to have their representation accepted as exclusive for all employees in the plants. If this procedure had been followed, it would have become a comparatively simple matter to force the independent worker to affiliate with the union, else he would have no status at all. The independent worker would soon be disposed of, and the plant must inevitably become closed to all except the union's members. The acceptance of the Labor Board's majority ruling would be tantamount to agreement that such an arrangement expressed the desire of the employee and employer, which is far from being the case. Now the proponents of this bill would compel, by law, that acceptance and its inevitable results. In other words, it would impose union recognition by statute. The closed-shop agreement is authorized in this bill.

If the individual worker is thus to be deprived of his own method of dealing with his employer, he has been deprived of his constitutional rights.

Last year we challenged the premise of the bill. At that time it recited in definite language that "certain tendencies of economic life had rendered the individual, organized worker helpless to exert actual liberty of contract to secure a just reward for his service and preserve a decent standard of living." That language was so palpably subject to contradiction and the position so vulnerable that it has been changed in the present bill. No attempt is made to assert the right of actual liberty of contract of the individual. The bill before you assumes that every employee is convinced that his destiny is dependent upon his ability to associate himself with others in his employment and to have some representative, whether of his own choosing or not, speak for him and arrange for his future welfare. We contend that that is not true.

The thousands of workers employed by the manufacturers whom I represent are the highest type of American workmen. These workers for generations have dealt, as individuals, with their employers; have had their ability and merit recognized in terms of promotion or increased wages, and today enjoy that same right without the aid of paid spokesmen who have the power to tax them. From their ranks have risen most of our industrial leaders.

Hartford County manufacturing has been for years on a truly open-shop basis. The union member has not been barred from the shop. Nor has the right of the individual worker to join a union been impaired. But his labor organization has not been encouraged to the detriment of the nonunion worker. On the contrary, every worker has enjoyed a freedom of contact and a freedom to demonstrate his worthiness and ability unhampered by restrictions.

Statistics over a period of months and years demonstrate that the average hourly earning of the factory workers of Hartford County is higher than that of the average in the United States. May I remind the committee again that no union representative was needed to obtain for them this full recognition of service.

We would point out, also, that under these favorable industrial conditions for years there have been no strikes in the factories until recently.

I wonder if the originators of this bill would impugn a disregard for services rendered, on the part of manufacturers, who, even at the termination of so great a depression as we have just experienced, can point with pride to employees on pay rolls who number their term of constant employment, with the same firm, into the fifties and sixties of years.

I might add that there are hundreds of employees on active pay roll in these factories who are practical pensioners, still assigned to insignificant and unimportant factory duties. These are in addition to many others on actual voluntary company pension lists. This does not indicate a failure to reward the past services of employees.

Manufacturers in these communities without thought of reward or public approbation have given privately of their money and time and human sympathy to help their individual workers. I know of hundreds of cases of employers helping to solve personal problems of employees or giving material aid in home financing, and even advice in domestic relations. No barriers must ever be erected to interrupt this human relationship between the employee and the employer.

Confidence is not to be established or maintained by putting in control organizations dissociated from management, responsible neither to the public, to the stockholders or owners, to the workers, to the consumer, to the Government,

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nor to the community in which problems arise; and virtually have the taxing power of government, through persuasion, threats and coercion, and who are avowedly apprehensive of their own abiilty to restrain the activities of their members.

The provisions of the bill would not equalize the bargaining power of the parties affected. It would confer upon one of the parties, namely the labor union, a monopolistic power which would stimulate strikes, disputes, and dangerous disturbances in industry, and load the dockets of the Federal courts. The independent workman would lose the very status which has been his pride. He would lose his present legally recognized right to choose his own method of contracting. He would be regimented into an organization, which, at any peak of its existence, has only been able to entice, influence, or force into its ranks less than 10 percent of the Nation's wage earners.

There are innumerable other reasons why this bill should receive unfavorable report from this committee. Chief among them is that this bill, if enacted into law, would give to a Federal board of three men greater power to regulate and control the operation of private industry and the employer-employee relationship in individual plants, than that enjoyed or exercised by any form of government other than a dictatorship.

We protest it as being unnecessary, unsound, and, we believe, unconstitutional.

MANUFACTURERS' ASSOCIATION OF HARTFORD COUNTY,
SIDNEY E. CORNELIUS, *Manager*.

Hartford, Conn., March 1935.

STATEMENT ON BEHALF OF THE MANUFACTURERS AND EMPLOYERS ASSOCIATION OF SOUTH DAKOTA, PROTESTING AGAINST THE PROPOSAL KNOWN AS "THE WAGNER LABOR DISPUTES BILL"

The Manufacturers and Employers Association of South Dakota, with headquarters in Sioux Falls, S. Dak., numbers among its membership the major industrial activity of the State, and includes operations such as mining, flour milling, packing, quarrying, woodworking, sheet-metal processing, printing, etc., as well as baking.

This statement regarding the Wagner Labor Disputes bill is made in response to a telegram received from Senator Walsh on March 21 reading:

"Regret because of prolonged hearings last year Committee cannot hear you separately, also National Association of Manufacturers before Committee Thursday presented complete case of all members, but if you wish to supplement that will print brief from you in record."

We do wish to supplement the presentation made by the National Association of Manufacturers by calling to your attention several factors which are the peculiar viewpoint of States industrially small, but with great potentialities for development if labor relations are not warped and hamstrung by the enactment of national legislation predicated on desire for dictatorial powers and control by certain groups.

Our viewpoint is based on certain geographic and economic factors which exist in several other of the Middle and Western States the same as in South Dakota. We refer to geographic isolation and small scattered population which make for small industries and more personal relationship between employer and employee. Geographic differences are seldom recognized in establishing national policies such as proposed in Senate bill 1958. As a specific example we would cite the N. I. R. A., which when applied to this State caused weeks and months of confusion, and necessitated adjustment, exemptions, special dispensations until today in actual operation it is just one mass of confusion. South Dakota has only 16 towns over the 2,500 population figure. There are several hundred smaller than that. With certain rules and regulations effective in only a few towns, and in those towns applied to only a few industries or operations, the lack of uniformity breeds confusion, irritation, and trouble. We believe that would be even more true if the proposed labor disputes bill were in operation.

Industry in South Dakota with a few exceptions has not gone much beyond the stage where the employer calls his men by their first names. He knows when the children have their tonsils out, when the mortgage falls due, when the Johns and Janes in the various families go away to college, when they graduate, and many of the little family personalities which create good will and pleasant relationships. The employee has confidence in the employer and the

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employer plays fair with the men on his pay rolls. A business must be very large in this State before this relationship is entirely lost.

But when national patterns are built, and new policies written from the viewpoint of those whose contracts have been limited to small areas of industrial activity or to a particular type of labor relationship, any attempt to apply such patterns and policies to regions like that of South Dakota just doesn't work.

There is little labor trouble in South Dakota, we believe because of the relationship existing between employer and employee, but since the enactment of the N. I. R. A., with its 7 (a) we have had agitation and some disputes. It is a fact that this has seldom arisen from irritation inside the plant, but has been caused by outside propaganda.

We are definitely opposed to any legislation which will encourage continued interference with labor relations and especially condemn this bill which establishes as a policy of the United States the encouragement of the closed shop.

We condemn the doctrine of majority rule. It is un-American to insist that if 51 men in a plant decide on a certain plan of action the other 49 must be bound by it. We believe that only that representation which is truly representative of the workers should be recognized, and no shop is going to have employees 100 percent of the same mind. Forcing the minority to abide by the decision of the majority is coercion of the worst kind, and the proponents say that this bill aims to prevent "coercion."

The legalization of the closed shop is contrary to the attitude of mind of both employers and employee found in South Dakota. Less than 1 percent of the employment of this State is organized. There isn't a member of this association who feels that he has a right to demand that the men working for him pay tribute to any organization for the privilege of having that job.

We also object to the list of unfair labor practices where the unfairness is defined entirely as acts of the employer. If such practices are unfair for the employer, they are equally unfair for the employee. If the employee or labor representative is relieved from responsibility, he can through ignorance, prejudice, or lack of judgment jeopardize the jobs of those he presumably represents by unwise action or unreasonable demands. He should be under the same restraint and responsibility that the employer is put under.

More than that, the set-up of the National Labor Relations Board proposed by this bill creates a body with authority exceeding any need or demand. A reading of the powers granted this proposed Board indicates that powers of remote control are to be secured under the false pretense of "protecting commerce."

Proposals such as this will only continue the uncertainty in the employer's mind occasioned by the conflicting administration and interpretation and misunderstanding regarding 7 (a) which is now in the minds of both employers and employees. A concrete evidence of that came up yesterday. An employer who has built one of the major industries of the State called our office with this problem:

"We decided sometime ago to reduce the personnel in one department. The newest man on is, of course, the one we expected to lay off. Today I learn that he is an officer in a small labor group recently organized. Now, if we go ahead as planned will we have to spend the next month proving that he was not discharged for union activities?"

According to Senate bill 1958 the Labor Board as it would be set up could step in and build up a case, have a trial, summon witnesses and create a situation where there was no situation more than a matter of factory routine which could easily be misinterpreted.

It would seem that there is no necessity for such legislation as proposed. Let the industrial States legislate as necessary to protect proper relationships between their employers and employees.

It may be that some States need much more machinery for adequate protection than they have now. If so, encourage that. But do not arbitrarily impose legislation of the nature of the Wagner labor disputes bill on the country as a whole. Drastic reform may perhaps follow recovery but it should not be imposed when it can act only as a handicap to recovery by encouraging an unbalanced employee relationship, and intereference from outside sources.

Compulsory patterns of action are not suited to the widely diversified types of employer-employee relationship existing in the United States today. The type of employee—native and foreign—the type of industry, the living conditions, and numerous other differences make a compulsion such as suggested

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impractical. The Wagner labor disputes bill would tend to keep in a turmoil the very situations which it is aimed to alleviate.

Respectfully submitted.

MARY A. MILLER, *Secretary.*

MARCH 28, 1935.

BRIEF OF THE MANUFACTURERS ASSOCIATION OF CONNECTICUT, INC.

PRESENTATION

The Manufacturers Association of Connecticut, Inc., before the date of hearings on Senate bill 1958 were called, asked for an opportunity to be heard. On March 21 officers of the association were notified by the Chairman of the Committee on Education and Labor, Senator David I. Walsh, as follows:

"Regret because of prolonged hearings last year committee cannot hear you separately, also National Association of Manufacturers before committee Thursday presented complete case of all members; but if you wish to supplement that, will print brief from you in record."

In compliance with that telegram, we herewith submit the opinion of the manufacturers of the State of Connecticut in regard to Senate bill 1958.

QUALIFICATION

The Manufacturers Association of Connecticut, Inc., is made up of a membership of practically all of the manufacturers in the State of Connecticut of any importance both large and small. The association has been in continuous existence since 1815, becoming incorporated in 1910. Without exception, all members of the association are operating under so-called "codes of fair competition" which include, in accordance with the National Industrial Recovery Act, the wording of section 7 (a) of that act. They, consequently, have had full opportunity to know the operation of that section of their respective codes and to know of the decisions that have been rendered by local, district, and Federal labor boards. They have reviewed the detailed provisions of the so-called "Wagner labor-disputes bill." They have viewed it in light of the Wagner labor-disputes bill of last year.

OBJECTIONS TO THE BILL

Even though there has been an evident attempt to soften the provisions of the original Wagner labor-disputes bill, the manufacturers of the State of Connecticut are convinced that its principal purpose is to unionize the employees of their plants under the single banner of the American Federation of Labor and its affiliates. The bill can do nothing other than strengthen the inequitable decisions of the boards referred to, many of which have already been rejected by the courts. The bill ignores the fact that the great majority of acts of illegal coercion and intimidation are exercised by representatives of labor unions, and that the rights of employers must be subjugated to the alleged rights of union members.

The creation of a permanent Federal labor board of three members, with full authority to set up multitudinous district and local boards, and to authorize such boards to call before them any whom they desired, upon very short notice, would leave employers without the small rights which they now have in refused to be hamstrung, coerced, and intimidated.

As we believe has been pointed out by others in the instant hearing, the power to call employers to answer any charge which might be made against them shall not be affected under the bill by any means of adjustment that has been or may be established by an agreement, code, law, or otherwise. In other words, the bill would nullify any legislation which might hereafter be enacted. Under the bill, the country can and undoubtedly would be littered with agents of the various boards created. Agents would have general and broad authority to investigate so-called "unfair practices" and enter upon any sort of fishing expedition. In other words, an army of "snoopers" would be developed who could very easily "make trouble if they did not find it." This fear cannot be unfounded, if we are to profit by the experience gained under the operation of the present law, Executive orders, and administrative orders.

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The bill would grant a general and broad authority of subpena enforced by proceedings for contempt through the district courts of the United States. Unfair labor practices are those relationships with labor which the "snoopers" and their informers determine in their own minds to be unfair.

We believe that there is grave danger of political control because of the method of appointment and the expiration of terms of individual members. We believe that the power of the board to make its own rules and regulations, which it may rescind or amend at will, will lead to even greater abuses than those under which industry has been operating through the permission granted under the N. I. R. A. for unlimited and uncontrollable Executive and administrative orders. Industry cannot continue to operate under executive legislation. In its hearings, the board is not governed by the rules of evidence, the employer has not right to cross-examine the witnesses, and yet the board, without attempting to sustain its findings or prove its case by evidence, may have its findings of facts made conclusive. In other words, the board is at one time an investigating body, a prosecuting agency, a court, and an enforcer of its own opinions and its own findings. In making its findings, it can, and it will, find only against the employer. Anyone who has analyzed the decisions of the present boards can have no doubt of that outcome.

Under the bill, it is only the employer who can be guilty of unfair labor practices. The company union is an unfair labor practice. The employer is unfair and will be convicted in many cases under misinterpretations if he interferes with the formation of any sort of a labor organization within his plant. If he takes any part in the formation of any employee-group, or if he renders such a group any financial or other support, he is guilty of practicing unfairly. The bill is obviously and certainly an involuntary closed union-shop contract imposed upon employers. The provision of the bill stating that "representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining" gives clear evidence of the indisputable fact that the Federal Government under the domination of union labor seeks to act as the membership forcer of organized labor. The so-called "majority rule" has not been sustained by the courts. One of the purposes of the bill, therefore, is to set aside the existing decisions so that a breathing space may be secured for further application of the iniquitous rule.

Under the bill, the board has full power to decide whether in order to effectuate the policy of the proposed act the unit appropriate for the purposes of collective bargaining shall be the employee unit, craft unit, plant unit, or other unit. The various boards have already conceived unbelievable plans to effectuate the closed-union-shop policy, but they have not, to our knowledge, conceived such a direct method of districting for election purposes as is provided for in this section of the bill. The Federal Government may aid the unions in the creation of horizontal or vertical unions in such a manner as to best suit the purposes of labor leaders to the detriment of nonunion workers, investors, management, and the public. Union labor still has its right to strike. That right we do not question. That equal rights for the use of defensive weapons should, in justice, be given to employers ought not to be questioned. Of the constitutional questions involved in the bill, little need be said. The drafters know of its unconstitutionality. Regulation of hours of labor, as well as a regulation of all employment relationships in manufacturing establishments is intrastate in character and cannot be made otherwise. Any attempt to make it otherwise by Federal enactment is merely an attempt to stall for time with the hope that the ulterior motives will be accomplished before cases can be adjudicated.

The author of the bill, the President of the United States, the Administrator of the National Industrial Recovery Act, and other representatives of the President, have repeatedly, in public statements, written and spoken, given full assurance to management that section 7 (a), and the board decisions that have arisen out of that section, did not mean what organized labor has interpreted them to mean, and yet labor's interpretation has been written throughout the Wagner labor disputes bill.

The public, who have paid the bill incident to the operation of the N. I. R. A., who have met the ever-increasing costs of unprecedented labor unrest, and whose lives and fortunes have been endangered, recognizes inequalities in the bill. Industrial management cannot live under it. The great army of workers, who see coercion, intimidation and loss of work time, do not want it. Investors

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know that labor unrest, with resultant loss of savings, is inevitable if the bill is enacted.

The bill on its present basis cannot be amended to protect the rights of the public, the workers, the investors, and managements. It ought to be rejected by all Members of Congress who have given any thought to the causes of the continuance of the depression.

Brief of Manufacturing Chemists' of the United States Contra Wagner Labor Disputes Bill

Industry opposes the Wagner labor disputes bill upon the same fundamental grounds urged against the measure that was introduced in the Senate last year (S. 2926, 73d Cong., 2d sess.); namely, that it is invalid in law and unsound as to policy and method.

In the face of the criticism directed against its predecessor, some of which even its distinguished sponsor admitted was justifiable, it seemed reasonable to anticipate that if similar legislation were again put forward it would be more temperate in substance, more reasonable in form, and more inclined toward cooperation than coercion.

However, the drastic and arbitrary provisions of the present measure are eloquent of how vain and unfounded was such a hope. Little apparent attempt has been made to meet and overcome the objections raised to the original proposal. On the contrary, the proponents seem to have been impelled to expand and extend many of the most objectionable features of the earlier bill; and, at the same time to introduce certain new and no less unreasonable additions. Consequently, all the old objections apply to the instant bill with increased force.

The major premise of this proposed legislation, its justification—one might almost say, its slogan—is "equality of bargaining power." This is an excellent catch phrase, and one well designed to attract favorable attention and secure immediate and universal support. But where is the evidence of all this equality which the bill declares to be its policy and its object of attainment, and which is so constantly stressed by its proponents? A reading of the bill discloses no equality. It speaks of the rights of employees and the obligations of the employers, but is silent respecting the obligations of employees and the rights of employers.

Employees are granted "the right to self-organization", to "bargain collectively", and to "engage in concerted activities." The right to strike is expressly guaranteed, without any limitation or restriction whatever. One searches vainly for any enumeration of the corresponding obligations that should accompany such rights. There is no requirement that the form of organization adopted by employees be such as to insure its legal responsibility. This has been advocated by no less an authority than Mr. Justice Brandeis (See Business—A Profession, Brandeis, p. 94), and was called to the attention of the distinguished sponsor of the present bill when its predecessor was before the Senate Committee on Education and Labor (Record of Hearings, S. 2926, p. 342). It seems impossible that so important a feature could have been inadvertently omitted from the present measure.

During the past 18 months the country has been torn by industrial strife of a bitterness almost unparalleled in our history. Strike followed strike with tremendous rapidity—each accompanied by threats, intimidation, molestation, and violence to persons and property. We think the question may well be asked, Would not the enactment of this bill not only guarantee the right to strike but also invite strikes?

Our history of industrial relations generally follows and parallels that of England. England has preceded us in the enactment of legislation dealing with industrial relations, collective bargaining, and trade disputes. The benefit of their knowledge and experience is available to us. Why, may we ask, have not the proponents of this bill availed themselves of that knowledge and experience? The right to strike was also recognized in England, but at the same time precautions were taken to provide against the certain adverse results of such activities. Why have not the proponents of the present bill inserted provisions designed to secure equality and protection similar to those of the British Trade Disputes and Trade Unions Act? In the absence of such provisions, deemed necessary by the experience of another great nation, where is the equality of bargaining power extolled in the declaration of policy of the present measure?

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In further pursuit of the attainment of this equality of bargaining power, the bill defines, in four categories, "unfair labor practices", when engaged in by an employer. There is no definition of, and no prohibition against, unfair labor practices by employees or organizations of employees. It would seem impossible that in the midst of so much emphasis on equality, such an omission could be deliberate. Yet the same omission was called to the attention of the sponsors of the bill during the course of the hearings on its predecessor (S. 2926, 73d Cong., 2d sess.), and it was admitted (pp. 348, 366, Record of Hearings, S. 2926) that intimidation or coercion "when it comes from any source, either a trade organization, or a company union, or an employer, ought to be made an unfair labor practice."

It was likewise admitted (p. 373, Record of Hearings, S. 2926) that certain types of strikes were unjustified and should not exist. But we search vainly in the instant measure for any limitation or restriction of the right to strike.

It has been said repeatedly by the proponents of the bill that it is not its object to outlaw "company unions", but merely "company-dominated unions." As a practical matter, however, under the language of the bill descriptive of unfair labor practices, it becomes impossible for an employer to cooperate with his employees in the formation or maintenance of an employees' organization without subjecting himself to the charge that he is "coercing", "dominating", or "interfering" with them. Yet there is no restriction against interference, domination, or coercion of employees by an outside labor organization. We contend that in permitting such a situation to obtain, the bill is unfair, unsound, and unjust.

Two of the most significant features of the measure are the provisions found in section 9 (a) and (b). Subsection (a) of section 9 provides that—

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees, in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining * * *"

Subsection (b) of section 9 provides that—

"The Board shall decide whether, in order to effectuate the policy of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other units."

Minorities are ignored. They are bound by the action of the majority in their unit. And it is for the National Labor Relations Board, created by the bill, to designate what that unit shall be. Thus 100 percent of a particular employer's employees might form an organization for the purpose of bargaining collectively with him, and he might be prohibited from recognizing or dealing with them because the Board had designated a craft unit or some "other unit" of which they were not members, or with which they did not desire to affiliate themselves, as the "exclusive representatives of all the employees in such unit." It is difficult to imagine a situation more unfair, unjust, and socially unsound; more restrictive of the freedom of contract; more subversive of individual rights; and more productive of discord, misunderstanding, bitterness, and strife.

Under the terms of this bill the employees composing these minorities will become a new class of "forgotten men." They will be compelled to labor under terms relating to wages, hours, and conditions of labor imposed by others without their consent. They may be forced to join organizations with which they do not desire to affiliate. We do not think that the Constitution sanctions the imposition by Federal enactment of "majority rule" of this sort. In fact the Supreme Court has already condemned such legislation. In *Adair* v. *United States* (208 U. S. 161), the court said (p. 174):

"While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least in the absence of contract between the parties—to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. * * * In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality

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is an arbitrary interference with the liberty of contract which no government can legally justify in a free land. * * *."

Furthermore, what precisely is meant by the phrase "majority of employees in a unit" who are to select the representatives for purposes of collective bargaining? Does it mean a plurality of the votes cast at an election for the purposes of choosing representatives; or a majority of the votes cast by those voting, but less than a majority of all the employees in the unit; or does it mean an actual majority of all the employees in the unit whether voting or not? How are official representatives to be selected when several groups in the particular unit support different candidates and refuse to yield? If representatives are successfully elected and "certified" by the Board, must the employer recognize and attempt to reach an agreement with them? Assuming the employer refuses to recognize the certified representatives or bargain with them, will the Board attempt to force him to do so on the ground that his refusal amounts to an unfair labor practice?

These questions provide a most fruitful field for endless dispute, misunderstanding and litigation. If this is the "clarification" of section 7 (a) that labor has been assured the bill will bring about, then labor is doomed to suffer a crushing disappointment.

The procedure provided for the hearing and adjudication of charges of unfair labor practice constitutes a most unusual example of judicial process. Whenever there is a charge, or the Board "shall have reason to believe" that any person has engaged or is engaging in an unfair labor practice, it has the power to cause a complaint to be filed stating the charges and containing a notice of hearing at a "place" therein fixed "not less than 3 days after the serving of the complaint." Within these 3 days the defendant is supposed to digest the complaint, prepare his answer thereto, secure his witnesses, and transport them to the place of hearing. When he arrives he may discover that the complaint has been amended to include charges against which he is not prepared to defend himself. In fact, during the hearing, or at any time thereafter before making its order respecting the case, the Board, which serves in the triple capacity of prosecutor, judge, and jury, may amend the complaint without notice to the defendant and without granting him any further opportunity to be heard. The Board in conducting its proceedings is not bound by any of the rules of evidence. Its orders may be based on evidence consisting of hearsay, supposition, and conjecture. In the event of an appeal it is provided that the Board's findings of fact supported by such "evidence" shall be conclusive. Is this the "due process of law" guaranteed by the fifth amendment to the Constitution?

If on the basis of the testimony taken the Board is of the opinion that the defendant is guilty of an unfair labor practice, it may issue an order to cease and desist therefrom and, without the intervention of a jury, award damages in the nature of "restitution" in order to "effectuate the policies" of the bill. A more flagrant violation of the seventh amendment is hard to imagine.

Section 13 of the bill possesses great potentialities for persecution, oppression, and general mischief making. It grants the Board and its agents power to investigate and copy the records of any person being proceeded against "at all reasonable times." The attendance of witnesses and the production of records in the course of such investigation may be required, on subpena, from any place in the United States or any of its territories or possessions. This investigatory and inquisitorial power may be exercised in connection with any controversy relating to the presentation of, or disputes with, employees. The section seems designed to further encourage the sort of snooping by a Federal agency which has already been vigorously condemned by the United States Supreme Court.

The entire authority of the National Labor Relations Board is predicated on the assumption that the relations between an employer and his employees "affect" interstate commerce, and that the regulation of such relations by Congress is consequently justified under the power granted it by the Constitution to regulate interstate commerce. This assumption and attempted regulation is made in the face of a long and consistent line of decisions of the United States Supreme Court from *Coe* v. *Erroll* (116 U. S. 517), down through *United Mine Workers* v. *Coronado Coal Co.* (259 U. S. 344) and *United Leather Workers* v. *Herkert* (265 U. S. 457) to the recent lower court decision in the *Weirton case*, holding that production and all the incidents in connection therewith, including the relations between an employer and his employees, are matters within the control of the several States and do not affect interstate commerce to the extent that the intervention of Congress is justified.

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In *United Leather Workers* v. *Herkert, supra*, the court said (p. 464):

"The sole question here is whether a strike against manufacturers by their employees, intended by the strikers to prevent, through illegal picketing and intimidation, continued manufacture, and having such effect, was a conspiracy to restrain interstate commerce under the antitrust act because such products, when made, were, to the knowledge of the strikers, to be shipped in interstate commerce to fill orders given and accepted by would-be purchasers in other States, in the absence of evidence that the strikers interfered or attempted to interfere with the free transport and delivery of the products, when manufactured, from the factories to their destination in other States, or with their sale in those States.

"We think that this question has already been answered in the negative by this Court. In *United Mine Workers* v. *Coronado Coal Co.* (259 U. S. 344, 66 L. ed. 975, 27 A. L. R. 762, 42 Sup. Ct. Rep. 570), a coal-mining company in Arkansas changed its arrangement with its employees from a closed shop to an open shop. The local union resented the change and the avowed purpose of the company to protect nonunion employees by armed guards. Violence, murder, and arson, were resorted to by the union. Seventy-five percent of the output of the mine was to be shipped out of the State, and a car of coal prepared for interstate shipment was destroyed by the mob of strikers and their sympathizers. It was contended that, as the result of the conspiracy was to reduce the interstate shipment of coal from the mines by 5,000 tons or more a week, this conspiracy was directed against interstate commerce, and triple damages for the injury inflicted could be recovered under the Federal antitrust law. But this court held otherwise, and reversed judgment for a large amount on the ground that the evidence did not disclose a conspiracy against interstate commerce, justifying recovery under the law."

If, as the court declares, the violence, destruction of property, and prevention of the manufacture of goods, which sometimes grow out of and result from the relations between employers and employees, only remotely and indirectly affect commerce, how can it be maintained that the original relations themselves and the acts of the parties in leading up to such relations affect commerce to such an extent as to constitutionally justify Federal regulation? We contend that it cannot, and that in attempting to do so the bill is clearly unconstitutional.

Viewed as a whole, the bill cannot attain the objects which it seeks to accomplish. On the contrary it will, if enacted, inevitably result in misunderstanding, suspicion, bitterness, disillusionment, and industrial strife. Industrial recovery will be hampered and the development of cooperative and sympathetic relations between employers and employees will be most seriously impeded. We reiterate, therefore, our contention that the bill is unsound in policy and invalid in law.

Respectfully submitted.

MANUFACTURING CHEMISTS' ASSOCIATION OF THE UNITED STATES,
By WARREN N. WATSON, *Secretary*.

STATEMENT SUBMITTED BY MUSKEGON EMPLOYERS ASSOCIATION

To the Committee on Education and Labor of the United States Senate:

On March 9, last, this association wired Senator David I. Walsh, chairman of your committee, asking your committee for time when a representative of industry in western Michigan might be heard in opposition to Senate bill 1958, known as "Wagner labor disputes bill." Your committee, through its clerk, advised us that our request to appear had been listed and we would be advised later as to time.

Under date of March 19, having heard nothing further, we again wired your committee requesting that you set time for us to appear. On March 21 we were advised by Senator Walsh that we could not be heard separately, but that your committee would be glad to receive a brief from us. We are, therefore, taking this means of recording with you our opposition to this bill.

At the very outset we desire to state that we are authorized to represent some 90 industrial concerns employing upward of 30,000 employees. These industrial companies are located throughout the manufacturing centers of western Michigan, including cities of South Haven, Holland, Grand Haven, Kalamazoo, Grand Rapids, and Muskegon.

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In addition to the above we are authorized to speak for the Muskegon branch of National Metal Trades Association, the Greater Muskegon Chamber of Commerce, the Metal Manufacturers' Association of Grand Rapids, Grand Rapids branch of the National Metal Trades Association, and the Grand Haven Chamber of Commerce.

On behalf of the various associations and industrial concerns whom we represent, we desire to protest most strenuously against the passage of this bill.

Under section 8 of this proposed bill it is declared to be unlawful for employers "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." The rights referred to in section 7 are "the right of self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Under paragraph 3 of section 2 the term "employee" is defined as including "any employee, and shall not be limited to the employees of a particular employer unless the act explicitly states otherwise."

Construing the language of section 8, above referred to, in the light of the definition of an employee as set forth in paragraph 3 of section 2, it must mean that any employee of any employer will be given the lawful right to "assist" labor organization by sympathetic strikes, picketing, boycotting, and by any other means which might come under the head of "concerted activities."

The National Labor Relations Board now in existence has already held that in accordance with the provisions of section 7 (a) of the National Industrial Recovery Act there can be no bargaining unless a contract results. The language above quoted must therefore be taken to mean that employees have the right to force their employers to "bargain" with their representatives.

Paragraph 2 of section 8 provides that it shall be unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

Our understanding is that Senator Wagner, the author of this bill, has claimed that it is not the purpose of the bill to make unlawful various plant organizations now in existence. Decisions of the National Labor Relations Board have already been made which in effect hold that plant organizations are unlawful. To our way of thinking, the words "dominate or interfere with" must be construed in line with these decisions and have for their purpose the outlawing of plant organizations.

Paragraph 3 of section 8 provides that it shall be an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this act, or in the National Industrial Recovery Act, as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization * * * to require as a condition of employment membership therein, if such labor organization is the representative of the majority of the employees in the appropriate collective-bargaining unit covered by such agreement when made."

Under this language an employer could be compelled to execute what is commonly known as a "closed-shop" agreement with any labor organization which represents a majority of the employees. The practical effect of this paragraph is to make it almost impossible for the employee to have any direct relations with his employer. The employer would at all times be under the constant threat that he has "encouraged" or "discouraged" membership in a labor organization and that he has discriminated by so doing.

Paragraph 4 of section 8 provides that it shall be an unfair practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act." This provision leaves the door wide open for any employee to file any charge whatsoever, no matter how fanciful it may be, without any fear of the consequences. It permits him to give any testimony that he may desire in any hearing without any regard to the truth and with no fear of consequences. An unscrupulous employee could run down his employer's business. He could make any remarks concerning his employer that he chose. He could undermine the morale and make the maintenance of discipline in the employer's plant absolutely impossible with no fear of the consequences to himself.

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At no place in the bill is any attempt made to make it unlawful for any labor organization directly, or through its agents or servants, to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7. The paid labor organizer is permitted to do anything that he chooses to gain his ends. He may threaten, he may make extravagent statements, he may make rash and impossible promises, he may even incite and encourage physical violence, without any fear of prosecution or punishment for himself or the organization which he represents, under the provisions of this act.

Section 9, subdivision a, of the bill attempts to enact into law the now famous decision of the National Labor Relations Board in the *Houde Engineering case*, namely, the majority rule. This section provides that "representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other basic conditions of employment."

The right of any individual employee to bargain for himself is taken from him. It would become unlawful for an employer to make any contract or agreement with any group of employees if that group were not in the majority. It makes it unlawful for any employer to enter into any contract or agreement with any individual employee. The only right that is preserved to the minority or to the individual is to "present grievances" to their employer through representatives of their own choosing, but under the terms of the act itself such grievances cannot be enforced in respect to rates of pay, wages, hours of employment, or other basic conditions of employment. In other words, grievances concerning dark stairways, lack of heat, poor ventilation, or similar things of a more or less minor character could be brought up by the minority, but the principal and basic conditions affecting the relationship of employer and employee could only be discussed through representatives of the majority.

We submit that the Congress should never attempt to pass a law which would take away from the individual employee his rights to bargain for himself in all matters pertaining to wages, hours, and basic conditions of his employment. We make the positive statement that the vast majority of the workers in this country desire to retain and insist upon retaining this right to themselves. As proof of this statement we respectfully call the attention of this committee to the results of the elections that were but recently had under the jurisdiction of the automobile board in the automotive industry. The vast majority of those employees participating in those elections stated in their secret ballots that they desired to represent themselves as individuals. If this bill were to be enacted into law, the unfortunate employee who happened to be working in some plant, or a unit of that plant, which was controlled by the American Federation of Labor, or some other labor organization, would find himself in the position of where he must either join the union or seek work in some other plant.

This would inevitably result in forcing more men out of work and increasing our welfare rolls. If this bill is enacted into law it must also follow that under this section the majority, no matter how much majority might be acquired, would have the sole and exclusive power to sell the labor of the minority at such prices and on such terms as it might see fit.

Every industrial plant affected thereby would automatically become a "closed shop" under the sole domination and control of that organization having as members the majority of the employees. Whether the influence and domination of that organization is good or bad would make no difference. So long as it retains the majority it absolutely controls the policy of that plant. It is also true that majority once obtained would never be lost unless the plant closed its doors, because no employee could work in that plant unless he became a member of the organization controlling such majority.

The bill further provides that a new National Labor Relations Board shall be established. This Board is to be perpetual and is given exclusive power to prevent those things declared by the bill to be unlawful. Under its provisions if any employer should be found guilty of any conduct declared by the bill to be unlawful, this National Labor Relations Board is given the power to issue "cease and desist orders" which would immediately become effective even though such employer conceives himself to be aggrieved and appeals therefrom to the Circuit Court of Appeals. Such an order would remain in effect unless a stay was granted by specific court order. Even in that event the findings of fact as determined by the Board, if there is any

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evidence whatever to support such findings, would be conclusive and final and not subject to reversal or modification by the courts.

The Board is given absolute authority to make, amend, and rescind such rules and regulations as it deems necessary to carry out the purposes of the act, and is given powers to investigate all of the affairs of any employer even to the extent of examining documents and reports that may have been made by such an employer to some other governmental department under the absolute pledge of secrecy.

Penalties for violations of any of the provisions of the proposed act are fixed by fine or by imprisonment. Under its provisions no industrial employer within the confines of this country would be free to operate his business as the best interests of himself and his employees might require. Nor would any employee ever again be free to fix the terms upon which his personal labor might be sold.

We firmly believe that a lasting prosperity in this country can never be obtained until industry is permitted to operate its business for the benefit of its employees, its stockholders, and itself without such governmental interference as is contemplated by the provisions of this act.

Every industry of the United States would be placed under the domination and control of the National Labor Relations Board and the American Federation of Labor if this bill should become law.

On behalf of those whom we represent we most strenuously protest against its passage and urge an unfavorable report by your committee.

Respectfully submitted.

MUSKEGON EMPLOYERS ASSOCIATION,
By L. H. SESSIONS, *Attorney.*

NATIONAL ASSOCIATION OF FINISHERS OF TEXTILE FABRICS,
New York, March 27, 1935.

Re: National Labor Relations Act, Wagner bill, S. 1958.

DAVID I. WALSH,
Chairman Senate Committee on Education and Labor.

MY DEAR SENATOR: We are forwarding herewith to each member of your honorable committee a statement prepared on behalf of the members of the National Association of Finishers of Textile Fabrics in opposition to the above bill.

This bill has been considered in meetings of the members of this association and this brief has been carefully prepared and this opposition statement is being submitted only after reaching the deliberate conclusion that the form of regulation provided by this bill will not be in the interest of the finishers and their employees.

We trust that this brief will be read by your honorable committee and given such consideration as we believe it merits.

Respectfully submitted.

ALBERT L. SCOTT, *President.*

STATEMENT ON BEHALF OF THE MEMBERS OF THE NATIONAL ASSOCIATION OF FINISHERS OF TEXTILE FABRICS IN OPPOSITION TO THE PENDING NATIONAL LABOR RELATIONS ACT TO CREATE A NATIONAL LABOR RELATIONS BOARD

This statement, in opposition to this bill, is submitted on behalf of the members of the National Association of Finishers of Textile Fabrics. A list of the members of this association is annexed.

The number of employees directly engaged in this finishing branch of the textile industry is in excess of 40,000. The various finishing plants are located almost entirely in the New England and Southeastern States, and vary in size, some employing a small number of employees, others a greater number, and in some instances from one to several thousand employees. Depending upon the location of the particular plant, the customs and habits of the employees, and all the surrounding circumstances, different methods of dealing with employment conditions, individually and collectively, have been used. These methods, developed through a long period of years, with great care and much expense, have adequately safeguarded the welfare of all the employees in every way. Problems affecting employment relations have been amicably and satis-

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factorily considered and determined, fairly and equitably to all interested parties. Whatever controversies or disturbances have arisen in this branch of the finishing industry concerning labor conditions did not originate from within this finishing industry. Almost invariably they came about through strife and discord outside the ranks of these cotton finishers, and the efforts of others, not employed by these finishers, to raise issues having no merit, and which if they had had any merit could have been speedily, amicably, and satisfactorily adjusted by these finishing employees and employers themselves.

This proposed bill has been carefully considered and the cotton textile finishers are unanimously opposed to its passage for the reasons herein generally and specifically stated.

BASIC REASONS FOR OPPOSITION

This bill is legally invalid. Its provisions cannot be reconciled with any of the decisions of the United States Supreme Court interpreting those phases of the Federal Constitution defining and limiting the powers of Congress in matters relating to commerce, impairment or limitation of the freedom of contract, reasonable search and seizure, deprivation of property without due process, fair trial by a jury, preservation of State rights and powers, and the general welfare.

The bill is unsound in theory and incapable of practical application. It is based upon irreconcilable and contradictory ideas and terms, such as compulsory collective bargaining. It seeks to outlaw certain acts and conduct on the part of employers, and such acts are condemned in terms not susceptible of definite ascertainment or specific performance and enforcement, except, if legal, that they can be enforced through an arbitrary decision of the Labor Board, whose decisions are to be final and conclusive on the facts, put into a record where rules of evidence to insure a fair trial need not be applied nor followed. The employer could not at any time know in advance whether he was acting in accordance with or in violation of this proposed law. He and his employees, who might not approve of the principles advocated by the representatives of the majority of employees, are deprived of virtually all freedom in dealing with employment conditions. The declaration of policy declares in favor of "full freedom", by the worker, of association, self-organization, and designation of representatives of his own choosing for collective bargaining. The bill specifically limits that "full freedom" and individual choosing by subjecting the freedom and judgment of employers and minority employees to the dictates of the representatives of the majority of the employees. The Board has the power to determine which organized unit shall be recognized for purposes of collective bargaining, and under its own rules of procedure may certify what representatives have been designated or selected.

The declaration of policy in section 1 of the bill does not contain an accurate statement of the true contents and full purport of the provisions of the bill itself. They are in conflict. It is not merely a measure to establish and preserve equality of opportunity in bargaining through the protection of the right to fairly and freely organize. It is not simply an attempt to compel parties to negotiate (bargain) collectively; in operation it is designed to force the making of agreements. The unfair labor practices apply only to the employer; no conduct of employees or their organization, as regards their interfering, restraining other employees in associating, and organizing for collective bargaining purposes and selecting their own representatives is defined as fair or condemned as unfair.

The bill would not equalize the bargaining power of the respective parties. It would not promote the free flow of interstate commerce but would engender strife and discord and create a fertile field for endless litigation. It undertakes to apply compulsion where coercion cannot be applied and that too in an illegal manner. In the finishing industry, especially at this time, this bill would do incalculable damage and harm to these employers and employees.

THE FINISHING INDUSTRY

Membership in this finishers' association comprises practically all the plants which finish cotton-textile fabrics. These plants also finish rayon and cotton and rayon mixtures, but this association does not include plants which do not finish cotton fabrics. Since cotton is the principal ingredient of the goods finished, these finishers are referred to as "cotton finishers." They are called

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"job finishers" because, to a very large degree, numerically and as regards the yardage finished, the goods are finished for another who is the owner. The gray goods are woven by the mills who sell the gray goods to converters, and who in turn contract with the job finisher to do the finishing. However, some plants are equipped to perform all three functions, weave, finish, and convert, that is, sell the finished goods. "Finishing" includes bleaching, dyeing, mercerizing, printing, etc. Not being the owner of the goods, and merely contracting for the doing of certain work, the job finisher is in constant jeopardy because he cannot control nor regulate his source of supply nor the market conditions of either the raw materials or the finished products. Charges for finishing services are directly affected by the costs of the raw materials, and the prices for the finished fabrics. Competition among finishers is severe because of the surplus plant capacity, and this competition is aggravated by increased operating costs of the mills and converters. Such increased costs on the part of the mills and the converters are not entirely reflected in the prices for the finished articles, but competition all along the line has forced some of them to be absorbed by lowering finishing charges. That is what has happened; it is the condition today; finishing charges are less, on many fabrics, than actual cost.

COMMERCE

The decisions of the United States Supreme Court are unanimous to the effect that factory labor is intrastate commerce and is exclusively within the jurisdiction of the States and not the Federal Government. It is urged that collective bargaining is an instrumentality necessary to provide for the free flow of interstate commerce, and hence within the power of Congress to regulate, under the clause of the Constitution which gives Congress power to regulate interstate commerce. An instrumentality which is a necessary part of interstate equipment and essential to its operation, or an operation which necessarily and substantially affects admittedly interstate transactions, will be regarded as a part of the interstate commerce. But that which is incidental to it, or remote, has been reserved to the States.

The United States Supreme Court, without exception, has said that manufacture and mining are not interstate commerce. The *Shreveport case* and the so-called "*Packers cases*" contain nothing to the contrary.

Section 2, paragraphs (6) and (8), of the bill define "commerce" and the term "affecting commerce." These definitions add nothing to the power of Congress. Since *Gibbons* v. *Ogden*, decided by Chief Justice John Marshall in 1824, 110 year ago, the Supreme Court has decided innumerable cases involving this same issue as to what "affects" interstate commerce. The character of interstate commerce cannot be changed by adding such a qualifying word. There is nothing bizarrely new in the word "affects" in this connection. To be candid, and in the interest of passing a valid law, one should look askance and with misgivings upon any proposal which plumes itself on novelty, when dealing with the constitutional characteristics of interstate commerce. "Truth changes her garments frequently—like every seemly lady—but underneath the new habit she always remains the same."

Strikes are not new; it is not proposed to outlaw them; nor prevent them by compulsory arbitration or compulsory agreements covering issues out of which a strike might result. It is proposed to induce and limit collective bargaining, and thereby, as claimed, obviate a possible strike or lockout which would possibly prevent continued manufacture. This possible cessation or impairment of manufacture is what the bill vaguely terms as creating "further obstacles to the free flow of commerce", and that the proximate cause is a refusal to negotiate (bargain) collectively and exclusively with designated representatives of a majority of the employees. Certainly, if goods are not produced they cannot later be shipped across State lines. Section 15 of the bill says: "Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike." That is reassurance in the broadest terms of an existing right. There is nothing about the right to close a plant, yet, if it were done, is there any assurance that the employer would not be charged with "interfering, restraining or coercing employees in the exercise of their rights to organize, choose representatives for collective bargaining and other mutual aid or protection", as an unfair labor practice?

There is no real or well-founded apprehension that there will not be an abundance of goods produced and shipped, if those who are willing to work are permitted to do so without interference. The whole idea about compelling

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collective bargaining in employment relations to provide for the free flow of commerce, is too remote and speculative to be seriously considered as being a part of the interstate commerce.

This bill is based upon the assumption that the denial of the opportunity to bargain collectively would be the cause of strikes which would interfere with the free flow of interstate commerce by preventing continued manufacture of goods. This is precisely the view adopted by the Federal circuit court of appeals in the *United Leather Works International Union* v. *Herkert et al.* (1922) (284 Fed. Rep. 446), but which was reversed by the United States Supreme Court. The conspiracy charged was that by too many pickets, assaults, threats, and intimidation of employees, the plaintiffs were prevented from manufacturing and selling goods in interstate commerce. The Federal circuit court of appeals stated:

"It is contended that because manufacture is not commerce and is not interstate commerce, the restriction or prevention of the manufacture of articles which by interstate commerce contracts and transactions, sellers have agreed to sell, make, transport to, and deliver in other States, and the prevention of existing interstate commerce in such articles in this way is not remediable by Federal courts under the Antitrust Act.

"It is true that manufacture alone is not interstate commerce. But it is equally true that when manufacture becomes an essential part of an indispensable step in the execution of an interstate commerce contract or transaction, or in the continuously flowing current of interstate commerce, as such manufacture was and is in this case, it becomes a part of, or step in, that interstate commerce to such an extent that a Federal court of equity is vested with the power and is subject to the duty to enjoin the execution of a combination or conspiracy to prevent, or practically prevent, the performance of such contracts, or to prevent or drastically restrict such interstate commerce by preventing the manufacture which constitutes one of its indispensable, intermediate steps or parts. While manufacture alone is not interstate commerce, neither is buying or selling, or contracting to buy or sell the goods, or loading or packing or shipping the goods, when considered by itself alone, interstate commerce, yet, each and all of these may become parts of and steps in interstate commerce, and when they shall become the restriction or prevention of these steps, which has the necessarily intended, direct and inevitable effect of stopping or drastically restraining that interstate commerce by the execution of the conspiracy to restrain or destroy it, may be lawfully enjoined by the Federal court.

Upon an exhaustive review of the above decision of the circuit court of appeals, the United States Supreme Court, through Chief Justice Taft, reversed the above decision of the lower court and stated the following (1924) (265 U. S. 457):

"While the bill averred that the defendants had instituted a boycott against the complainants and were prosecuting the same by illegal methods, there was no evidence whatever that any attempt was made to boycott the sale of the complainants' products in other States, or anywhere, or to interfere with their interstate shipments of goods ready to ship.

"The sole question here is whether a strike against manufacturers by their employees, intended by the strikers to prevent, through illegal picketing and intimidation, continued manufacture, and having such effect, was a conspiracy to restrain interstate commerce under the Antitrust Act because such products when made were, to the knowledge of the strikers, to be shipped in interstate commerce to fill orders given and accepted by would-be purchasers in other States, in the absence of evidence that the strikers interfered or attempted to interfere with the free transport and delivery of the products when manufacture from the factories to their destination in other States. or with their sale in those States.

"We think that this question has already been answered in the negative by this Court (citing *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344).

"This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce, by the illegal or tortuous prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce. It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price, or discriminate as between its would-be purchasers that the unlawful interference with its manufacture can be said directly to burden interstate commerce.

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"The record is entirely without evidence or circumstances to show that the defendants in their conspiracy to deprive the complainants of their workers were thus directing their scheme against interstate commerce. It is true that they were, in this labor controversy, hoping that the loss of business in selling goods would furnish a motive to the complainants to yield to demands in respect to the terms of employment; but they did nothing which in any way directly interfered with the interstate transportation or sales of the complainants' product.

"We concur with the dissenting judge in the circuit court of appeals when, in speaking of the conclusion of the majority, he said: 'The natural, logical, and inevitable result will be that every strike in any industry, or even in any single factory, will be within the Sherman Act and subject to Federal jurisdiction provided any appreciable amount of its product enters into interstate commerce.'

"We cannot think that Congress intended any such result in the enactment of the Antitrust Act or that the decisions of this Court warrant such construction.

"Decree reversed." (1924) (265 U. S. 457.)

Also *United Mine Workers* v. *Coronado Coal Co.* (1922) (259 U. S. 344:)

"Coal mining and the manufacture of goods is not interstate commerce, even though the coal or goods may be shipped from one State to another. Interruption of coal mining is not an interruption of interstate commerce."

The Supreme Court has been extremely favorable to labor in passing upon the more than 100 labor cases submitted to it. This is true also as regards the numerous acts passed by the States affecting conditions of employment. (See Congress, the Constitution, and the Supreme Court, by Charles Warren, pp. 223–245.)

However, the Supreme Court has been consistent and firm in not relaxing the rule that manufacture is not interstate commerce. This is due to the fact that once the barriers are broken down, there is no force to the argument that further infringements upon the rights guaranteed to the States by the Constitution would not result. Violation of State rights is the ground upon which most of the cases have been decided by the Court. Fifty-three acts of Congress were declared unconstitutional in 135 years (1789 to 1924). From 1789 to 1864, 75 years, two acts were held invalid. From 1906 to 1924, 19 years, 23 laws were held to be unconstitutional. During the last few months two acts of Congress were held invalid; as many as during the first 75 years of the country.

The increase in the last 20 years in the number of acts declared unconstitutional has been due largely to the vast increase of Federal interference into matters of State concern by Federal statutes. The Supreme Court has passed upon the constitutionality of State statutes, involving labor legislation and has upheld those statutes in more than 60 of such cases, and the variety and radical nature of many of those statutes, as sustained, is quite remarkable.

As illustrative of the importance which the Court has attached to the necessity of preserving the rights of States to legislate concerning conditions of employment in a factory, the following may be cited:

"Every feature of our Government, both State and national, proved that the people were sensible of restraining as well the headlong impetuosity of the multitude as the inordinate ambition of the few. Where such restraint was not improved, there was no genuine liberty." (John Randolph of Virginia in the House, Nov. 13, 1807.)

"No action (bill of rights) ever taken by Congress is more clearly the result of a general demand for limitations on legislative power, to be enforceable through a judiciary. The genesis of this national bill of rights should be most carefully studied by the liberals and radicals in this country today, for they are the very persons most likely to stand in need of the protection intended to be guaranteed by this portion of the Constitution." (Congress, the Constitution and the Supreme Court, by Charles Warren, p. 76.)

"It (the Constitution) was an economic document, drawn with superb skill, by men whose property interests were immediately at stake; and as such, it appealed directly and unerringly to identical interests in the country at large." (Economic Interpretation of the Constitution, 1913, p. 188, by Charles A. Beard.)

"Men on all sides contended that, while the first object of the Constitution was to establish a Government, its second object, equally important, must be to protect the people against the Government. That was something which

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all history and all human experience had taught." (Congress, the Constitution, and the Supreme Court, by Charles Warren, p. 79.)

"Having protected themselves by specific restrictions on the power of their State legislatures, the people in this country were in no mood to set up and accept a new National Government, without similar checks and restraints." (Id., p. 79.)

"The declaration of the Constitution against the power of a State is paramount, not to be * * * bent to some impulse or emergency because of some accident or immediate or overwhelming interest which appeals to the feelings and distorts the judgment." (Holmes, J., dissenting, in *Northern Securities Co.* v. *United States*, 1904, 193 U. S. 400.)

This last quotation applies with equal force to the limitations upon the power of the National Congress, and history and court decisions are replete with instances designed to limit authority in the National Government by preserving to the States the rights guaranteed to them.

"An elective despotism was not the Government we fought for." (Thomas Jefferson.)

"In every government there must be somewhat fundamental, somewhat like a Magna Carta, which would be standing unalterable. * * * To what assurance is a law * * * if it be in the same legislature to unlaw it again? Is such a law likely to be lasting? It will be a rope of sand; it will give no security, for the same men may unbuild what they have built." (Oliver Cromwell, 1654.)

"Chief of the possible evils of a republican form of government is the danger of the majority oppressing the minority." (George Mason of Virginia in the Federal Convention.)

If this bill be valid, Congress could regulate all business, and State governments would be almost superfluous. For the effect of this bill, the following United States court opinion is important:

"No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufacture and commerce. Manufacture is transformation, the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. * * * If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufacturers, but also agriculture, horticulture, stock raising, domestic fisheries, mining; in short every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest or the cotton planter of the South plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform and vital interests, interests which in their nature are and must be local in all details of their successful management. agement.

"The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement toward the establishment of rule of production in this vast country, with its many different climates and opportunities, could only be at the sacrifice of the peculiar advantage of a large part of the localities in it, if not every one of them. On the other hand, any movement toward the local, detailed, and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question. Nor this alone. Even in the exercise of the power contended for, Congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. These instances would be almost infinite, as we have seen; but still there would always remain the possibility, and often it would be the case, that the producer contemplated a domestic market. In that case the supervisory power must be executed by the State; and the interminable trouble would be presented, that whether the one power or the other should

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exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the State governments, and more provocative of conflicts between the general government and the States, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine. (*Coe* v. *Errol*, 116 U. S. 517, 525.)

"It can hardly be said that a combination in restraint of what is interstate commerce does not directly affect and burden that commerce. The error into which the circuit court fell, it seems to us, was in not observing the difference between the regulating power of Congress over contracts and negotiations for sales of goods to be delivered across State lines, and that over the merchandise, the subject of such sales and negotiations. The goods are not within the control of Congress until they are in actual transit from one State to another. (*United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271.)

(Justice Taft reviewing *United States* v. *Knight*, 15 U. S. 1, and *Kidd* v. *Pearsons*, 128, U. S. 1.)

RIGHTS OF EMPLOYEES

Section 7 of the bill gives employees the right to organize and bargain collectively through representatives of their own choosing. New legislation is not necessary for the creation of those rights on behalf of the employees. However, those general rights, as set forth in this section 7, are limited by succeeding provisions of the bill, particularly section 9 (a), which prevent employers and minority employees from bargaining collectively except through the representatives of the majority of the employees.

Section 8 defines unfair labor practices, and these unfair labor practices apply only to the employer; they do not apply to any of the employees or employee organizations. It is therefore declared unlawful for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7. * * * to dominate or interfere with the formation or administration of any labor organization or contribute financially or give support to it. * * * By discrimination in regard to hire or tender of employment or any term or condition of employment to encourage or discourage membership in any labor organization. To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act." A proviso clause permits employees or their representatives to confer with an employer during working hours without loss of time or pay. The employer is financially and otherwise responsible for his own acts and conduct.

But, as a practical matter, labor unions are immune and cannot be held to strict accountability for any unlawful interference, restraint, or intimidation which might be exercised and applied to employees who may be in the minority or may not agree with the views of those claiming to represent a particular employee organization. The acts and conduct made unlawful when indulged by the employer are indefinite and uncertain and not susceptible of orderly enforcement. Complaints may be registered with the National Labor Relations Board by any person, whether well founded or without foundation. Inevitably, the condemning as unlawful by any such vague and indefinite terms will result in discord, distrust, industrial unrest, and possible disturbances, and lead directly to interminable investigations and litigation.

POWERS OF THE BOARD

The powers of the Board, ostensibly, are to insure equality of bargaining power through representatives of the employees selected through the exercise of individual judgment and achieve these results through fair labor practices by attempting to prevent unfair labor practices by only the employer. The bill assumes unfairly and unreasonably that the employer alone can be guilty of such unfair labor practices. In the exercise of such ostensibly limited powers of the Board the bill provides for other great and unnecessary powers.

Section 9 (a) definitely establishes the majority rule principle, by providing that the collective bargaining shall be by the representatives of the majority of the employees in a unit appropriate for such purposes, and they shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other basic conditions of employment.

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The Board is given power to determine the unit appropriate for the purpose of collective bargaining and the Board may investigate and certify the name or names of the representatives that have been designated or selected.

The Board is given power to issue complaints, pass upon the charges filed, and require an employer to appear before the Board or any agency it may designate within not less than 3 days after the service of the complaint. In the conducting of such hearings the Board or designated agency is not required to observe the rules of evidence prevailing in courts of law or equity. Upon the evidence submitted the Board can make its findings of fact and issue orders to cease and desist from the practice complained of. In addition, the Board may issue affirmative orders requiring the doing of such things as it may deem necessary to effect the purposes of the act, including the making of restitutions and further requiring the making of reports from time to time, showing the extent to which the adjudged-guilty employer has complied with the orders issued.

Amendment VII of the Constitution is:

"In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

This bill permits an examiner to disregard rules of evidence and thus confront an employer with hearsay evidence and rumors and compel him, based upon findings of fact by the Board, from which findings of fact there is no appeal to any court, to make payment of money. This is not due process of law within the meaning of the Federal Constitution and affords no opportunity for a jury trial. It is in direct conflict with the above-mentioned seventh amendment to the Federal Constitution.

These orders of the Board are unenforceable through the Federal courts. The bill expressly provides: "The findings of the Board as to the facts, as supported by evidence, shall be conclusive." This is not a case of delegation of authority to an administrative agency or quasijudicial body, merely for the purpose of gathering facts. It is empowering a board with judicial powers to issue orders and decrees and enforce the collection of money without such trial as is specifically required by the Federal Constitution.

INVESTIGATORY POWERS

The investigatorial powers of the Board are most remarkable. The Board, or its agents, will have access to and the right to copy any evidence which it may deem pertinent, subpena witnesses, require production of facts, administer oaths. Such attendance of witnesses and production of evidence may be required from any place in the United States at any designated place of a hearing. Contumacy or refusal to obey any such subpenas may be punished as a contempt of the court having jurisdiction over the matter.

In addition to all the above, several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers and information in their possession relating to any matter before the Board.

It is not constructive to pass a law so comprehensive in scope and revolutionary in character as this bill, which later necessarily will be declared invalid. Industry is confused, and is reluctant to move forward; the passage of this bill would tend further to destroy confidence in the future. The conclusion is inescapable that this proposed bill is intended to extend the regulatory powers of Congress over employment conditions, the control of which is exclusively within the rights guaranteed to the States by the Federal Constitution. It is an attempt, through the mere statement of a conclusion, to declare as being interstate commerce, operations which are not a part of interstate commerce.

It is class legislation; it arbitrarily discriminates between employers and employees. The definitions of unfair labor practices, applicable only to employers, are particularly obnoxious, and, unfairly and without justification, assume that the practices condemned have been indulged only by employers and not by employees, their unions or organizations. It is not conducive to industrial peace to outlaw certain conduct in vague and equivocal terms. Under the definitions of unfair labor practices, every employer would be required to deal with his own employees regarding labor problems at his peril. By failing to impose any restrictions on labor organizations in their negotia-

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tions and dealings with other employees and their employers, the bill does not deal with the most important phase and element in the cause of industrial strife.

The arbitrary and discriminatory features of the bill are peculiarly objectionable and, instead of promoting, would positively impede the free flow of interstate commerce. In order that there may be due process under the law, it is necessary that there shall be a definite and ascertainable standard of conduct to which it is possible to conform. In a most vigorous opinion, rendered by the late Chief Justice White of the United States Supreme Court (*United States* v. *Cohen Grocery Co.*, 255 U. S. 81), a Federal law, which prohibited in general terms profiteering during the war, was held to be unconstitutional. That law provided that it should be unlawful "to make an unjust or unreasonable rate or charge in handling or dealing in or with any necessaries." The Court held that it did not establish an ascertainable standard of guilt nor inform accused persons of the nature and cause of the accusation against them. It penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the Court and the jury. Such a statute is repugnant to the due-process clause of the Constitution. The unfair labor practices of this bill are equally indefinite and vague and do not prescribe any ascertainable standards of conduct. An employer would never know whether this customary and normal conduct might be regarded as an interference or restraint within the meaning of these defined unfair labor practices.

The broad investigatorial powers of the Board and its agents are especially objectionable. Under the slightest pretext or claim of violation of the provision of this bill, any employer can be subpenaed and required to produce all his papers, books, and documents, which the Board may deem pertinent. Many reports, highly confidential in character, are required under various laws to be submitted by employers to different departments of the Federal Government. Under this bill, the National Labor Relations Board can require any of those departments to produce any documents and records filed with them by employers, which the Board may consider relevant to the matter being investigated by it and expose such highly confidential and personal records in a public hearing.

This bill would not encourage collective bargaining, but would discourage it. Nor would it establish equality in bargaining relations. The imposition of the will of the representatives of the majority of the employees upon the minority of the employees is a flat contradiction of the declaration of policy of this act. Under that majority rule "the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing" is not protected as the policy expressly states. That right of such "full freedom" is denied and taken away from the worker by section 9 (a) of the bill.

It is contrary to orderly government by law to clothe any board or tribunal with powers of investigation, prosecution, and judicial decision. This labor board may make its own rule of procedure, gather facts, disregard rules of evidence, issue injunctions and restraining orders, issue orders requiring the doing of an affirmative act, including payment of money, and the Board's decision on the facts is final.

For the reasons above set forth, this bill does not provide an appropriate method for encouraging industrial peace nor the achievement of the purposes and objects claimed for it.

Respectfully submitted.

WM. J. MATTHEWS,
Counsel, Legislation Committee for the National Association of Finishers of Textile Fabrics, New York.

PHILIP A. JOHNSON, *Chairman.*
HENRY B. THOMPSON, SR.,
J. K. MILLIKEN.
C. P. WOOD.

MARCH 25, 1935.

MEMBERS OF NATIONAL ASSOCIATION OF FINISHERS OF TEXTILE FABRICS, NEW YORK, AS OF MARCH 27, 1935

Acme Finishing Co., Pawtucket, R. I.; American Finishing Co., Memphis, Tenn.; Amoskeag Manufacturing Co., Manchester, N. H.; Apponaug Co., the, Apponaug, R. I.; Aspinook Co., the, Jewett City, Conn.; Jos. Bancroft

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& Sons Co., Wilmington, Del.; The Beachdale Co., Voluntown, Conn.; Bellman Brook Bleachery, Fairview, N. J.; Bondsville Bleachery & Dye Works, Bondsville, Mass.; Bradford Dyeing Assn., Box 539, Westerly, R. I., Cannon Mills, Kannapolis, N. C.; Claysmith Co., Inc., 290 Broadway, New York City; Cold Spring Bleachery, Yardley, Pa.; Cranston Print Works, Cranston, R. I.; D. & S. Processing Co., Clifton, N. J.; Davis & Catterall, 40 Worth Street, New York City; Defiance Bleachery, Barrowsville, Mass.; Delta Finishing Co., Frankford, Philadelphia, Pa.; Dempsey Bleachery & Dye Works, Pawtucket, R. I.; Dutchess Bleachery, Inc., Wappingers Falls, N. Y.; Eddystone Manufacturing Co., Eddystone, Pa.; Exeter Manufacturing Co., Exeter, N. H.; Erwin Cotton Mills, West Durham, N. C.; Fairforest Finishing Co., Spartanburg, S. C.; Fall River Bleachery, Fall River, Mass.; Farr Alpaca Co., Holyoke, Mass.; Farwell Bleachery, Lawrence, Mass.; Fulton Bag & Cotton Mills, Atlanta, Ga.; Glasgo Finishing Co., Glasgo, Conn.; Great Falls Bleachery & Dye Works, Somersworth, N. H.; Greenville Finishing Co., Greenville, R. I.; Greenwich Bleachery, East Greenwich, R. I.; Hampton Co., Easthampton, Mass.; Hanes Dye & Finishing Works, Winston-Salem, N. C.; Harodite Finishing Co., North Dighton, Mass.; Hartsville Print & Dye Works, Hartsville, S. C.; Hodges Finishing Co., East Dedham, Mass.; Hohokus Bleachery, Hohokus, N. J.; Imperial Printing & Finishing Co., Providence, R. I.; Kerr Bleaching & Dye Works, Concord, N. C.; Lanett Bleachery & Dye Works, West Point, Ga.; Lewiston Bleachery & Dye Works, Lewiston, Maine; Lincoln Bleachery & Dye Works, Lonsdale, R. I.; Liondale Bleach, Dye & Printing Works, Rockaway, N. J.; Lowell Bleachery, St. Louis, Mo.; Lowell Bleachery South, Griffin, Ga.; Mansfield Bleachery, Mansfield, Mass.; Martin Dye & Finishing Co., Bridgeton, N. J.; Metakloth Co., Lodi, N. J.; Middlesex Bleach, Dye & Printing Works, Somerville, Mass.; Millbank Finishing Corporation, Lodi, N. J.; Millville Manufacturing Co., 512 Walnut Street., Philadelphia, Pa.; Mount Hope Finishing Co., North Dighton, Mass.; Narragansett Finishing Co., Box 552, Westerly, R. I.; North Carolina Finishing Co., Salisbury, N. C.; Ohio Falls Dye & Finishing Co., Box 566, Louisville, Ky.; Oneida Bleachery, New York Mills, N. Y.; Pacific Mills, Lawrence, Mass.; Passaic Print Works, Passaic, N. J.; Piedmont Print Works, Taylors, S. C.; Pond Lily Co., New Haven, Conn.; Pontiac Finishing Co., Providence, R. I.; Providence D. B. & C. Co., Providence, R. I.; Proximity Print Works, Greensboro, N. C.; Queen Dyeing Co., Providence, R. I.; Ramapo Finishing Co., Sloatsburg, N. Y.; Renfrew Bleachery, Travelers Rest, S. C.; Riverside & Dan River Cotton Mills, Danville, Va.; Robertson Bleachery & Dye Works, New Milford, Conn.; Rock Hill Printing & Finishing Co., Rock Hill, S. C.; Rockland Bleach & Dye Works, Brooklandville, Md.; Sayles Finishing Plants, Saylesville, R. I.; Slatersville Finishing Co., Slatersville, R. I.; Southbridge Finishing Co., Southbridge, Mass.; Southern Bleachery, Inc., Taylors, S. C.; Springdale Finishing Co., Canton, Mass.; Standard Bleachery & Printing Co., Carlton Hill, N. J.; J. L. Stifel & Sons, Wheeling, W. Va.; Summerdale Dyeing & Finishing Works, Holmesburg, Philadelphia, Pa.; Swansea Print Works, Swansea, Mass.; Textile Printing & Finishing Works, Lebanon, Pa.; Thomaston Bleachery & Dye Works, Thomaston, Ga.; Toledo Dye Works, Toledo, Ohio; Uncas Finishing Corporation, Mechanicsville, Conn.; Union Bleachery, Greenville, S. C.; United Merchants & Manufacturers, Inc., 271 Church Street, New York City; United States Finishing Co., 400 Charles Street, Providence, R. I.; Universal Screen Printing Co., 6–12 Morris Street, Paterson, N. J.; Utica-Willowvale Bleaching Co., Chadwicks, N. Y.; Ware Shoals Manufacturing Co., Ware Shoals, S. C.; Warwick Print Works, Bound Brook, N. J.; Windsor Print Works, North Adams, Mass.; Yates Bleachery, Flintstone, Ga.

NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION,
New York, N. Y., March 28, 1935.

In re proposed National Labor Relations Act.

Hon. DAVID I. WALSH,
Chairman Senate Committee on Education and Labor,
Washington, D. C.

MY DEAR SENATOR WALSH: The National Electrical Manufacturers Association, in behalf of its 500 member companies with 125,000 employees on their rolls, engaged in the manufacture of electrical appliances, apparatus, and equipment, wishes to record its position with reference to the proposed National Labor Relations Act, known as "S. 1958", the declared purposes of which

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are to promote equality of bargaining power between employers and employees and to diminish the causes of labor disputes.

The birthright of this democracy gives every man a free right to seek a vocation or a means of livelihood that is to his liking. Certainly therefore every man should have a free and unrestricted, as well as individual, right to pursue gainful occupation that will result in the greatest development of his talents through the course of life.

This right surely also includes the right to seek an employer of his choice, the right to decide if the conditions of the employer's offer to enter in his employment are satisfactory and by the same token the right to determine the satisfactoriness of the arrangement throughout the continuation of employment. This latter right may be pursued by individual dealing with the employer or by "pooling" the individual's interest with the interests of other employees similarly engaged in collective dealing en masse or through representatives of their own choosing. The proposed bill is designed to "legislate" employees into organizations of a type presupposed by the proponents of the bill to be satisfactory for collective dealing and denies the right of free choice to the individual employee or to groups of employees.

Every employer in this industry values the progress which has been made in the orderly development of sound employer-employee relations in this country during the past 15 years. Likewise, every person, whether he be employer or employee, realizes that such relations can only evolve in an atmosphere of mutual respect and confidence. Sound industrial relations can no more be imposed by legislative fiat or dictatorial mandates than can any other human relationship.

Even a most cursory examination of the history of industrial relations in the United States will show remarkable achievements in the development of joint cooperation between employers and employees, in the solution of their mutual problems. It is hardly necessary to point out that the last 5 years have imposed grave problems for adjustment in all enterprises. By and large, employers and employees have mutually worked out the inevitable problems arising from these unusual conditions. We have in mind now the day to day problems of adjustment and accommodation, essential in the conduct of any enterprise which are best solved by those familiar with local conditions. With an appreciation of what this has meant in hundreds of our companies we cannot subscribe to the point of view that the interests of employers and employees are inherently antagonistic and diametrically opposed. It is incredible that anyone should suggest that this vast, complex network of human relationships can be fostered and developed through legislative enactment.

The bill as drawn will militate against rather than foster cooperation between an employer and his employees. Further, it promotes the interests of the professional aspects of the labor movement at the expense of the interests of those workers who choose other methods of bargaining. The restrictions indirectly placed upon the employee representation form of collective bargaining can be construed only as an intent to compel employees to organize through a type of organization which requires the payment of dues, whether they wish to or not.

If the proponents of this bill are truly sincere in their desire to promote the interests of employees in general, then employees who do not choose to affiliate with a particular organization should be protected from intimidation or coercion from any source whatsoever.

If the Federal Government is to foster the task of grouping the employees of this country in units, districts, or crafts, and at such times and places as the proposed Board shall see fit, then the American people may well ask whether such resulting organizations are not in themselves charged with a public trust and should not therefore be subject to public regulation. It is a fundamental principle in all human endeavor that responsibility must accompany authority.

We do not believe that employer-employee relations properly constitute a field for Federal governmental regulation, excepting perhaps specific cases involving only interstate commerce. We deny the implication that true industrial peace can be promoted in this way. Should this bill be enacted, it will set back the orderly course of progress in industrial relations in this country and greatly retard recovery.

Section 8 establishes certain unfair labor practices. Paragraph 2 of this section prohibits an employer from contributing financial or other support to

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any employees' organization, providing that, subject to such rules and regulations as the Board may see fit to make, the employer is not prohibited from making payment to employees for time spent during working hours in conferring with the employer. It is our belief that this provision "outlaws" and would terminate collective bargaining through employee representation, works councils, and other similar cooperative plans. Under the provisions of this paragraph the employer would be prohibited from reimbursing employee representatives for time spent by them in connection with their duties as employee representatives. Conceivably, this paragraph would prevent reimbursing employee representatives for: time actually spent attending meetings of employee representatives only; or in contacting their constituents during working hours; or time and expense in traveling to and from joint committee meetings; or for time spent in connection with employee election committee work.

Paragraph 3 of section 8 promulgates the closed shop in accordance with the wishes of the majority. It is believed that such provision ignores the inherent constitutional rights of a minority group and that no employee should be required to join or refrain from joining any organization as a condition of his employment.

Section 9 of the proposed bill seeks to establish a "majority rule." Moreover, it proposes to delegate to the Board the power to determine arbitrarily what the proper unit appropriate for the purposes of collective bargaining shall be. Leaving aside the question as to whether either of these proposals can possibly be constitutionally valid, it is our belief that neither of them is in the interests of employees. In our opinion they are both unwarranted attempts through bureaucracy to establish jurisdiction over fundamental relations which are better developed through cooperation between employer and employee.

Section 10 (a) gives the Board jurisdiction over "any other means of adjustment or prevention that has been or may be established." The Board can thus be construed to have power not only to determine the means for collective bargaining but also to control the form of the understanding and agreement and even to exercise veto over a conclusion that is satisfactory to the parties involved.

Section 10 (c) enables the Board to exercise broad inquisitorial powers on any pretext whatsoever. The employer would be required to appear any time or any place upon 3 days' notice to answer to the charge of having "engaged in an unfair practice affecting commerce." The Board or any of its agencies is permitted to amend such complaint at its discretion at any time prior to the issuance of an order based thereon. This is incredible enough, but the bill goes further in establishing that "in any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling."

It is inconceivable that such arbitrary powers and procedures which are contrary to the elementary principles of justice should be enacted into legislation affecting the basic relations between employers and employees that are so vital to the free flow of the commerce of the Nation.

Section 12 of the bill defines the circumstances and conditions under which arbitration may be had but goes so far as to impose upon the court, reviewing such cases, rules and regulations under which the court itself must function.

CONCLUSION

The National Electrical Manufacturers Association is deeply interested in the continued advancement of sound employer-employee relations. There are, however, no panaceas whereby perfection in these relations may be attained instantly and universally. Industrial peace is born not from legislation or regulation but in the hearts of men through cooperation inspired by mutual respect and confidence.

We are certain that the proposed bill (S. 1958) will not contribute to industrial peace, that it is not designed to promote cooperation between employer and employee, and that it represents an arbitrary and unwarranted assumption of power by Government that transcends the underlying concepts of fair and orderly judicial processes.

We, therefore, respectfully request that your committee report adversely on this bill.

Respectfully yours,

F. C. JONES, *President.*

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NATIONAL ERECTORS' ASSOCIATION,
New York City, March 25, 1935.

Hon. DAVID I. WALSH,
Chairman Senate Committee on Education and Labor,
Senate Office Building, Washington, D. C.

DEAR SIR: Last year you were kind enough to accept a statement from me upon the original Wagner bill and to make it part of the committee's record.

The enclosed statement upon the pending measure is again made in behalf of the National Erectors' Association, whose members fabricate and erect the greater part of the structural steel used in the country.

May I hope that you will extend the same courtesy of having it made part of the record?

Yours very truly,

WALTER DREW, *Counsel.*

WAGNER LABOR DISPUTES BILL

This measure provides for a "National Labor Relations Board" of three members appointed by the President, with advice and consent of the Senate, for periods of 1, 3, and 5 years, and successors for 5 years. One term thus expires every 2 years, which means a large measure of political control. This board has the power to make its own rules and regulations, which may be amended or rescinded at its pleasure. The board may try cases based on complaints which it may itself initiate, or which may be based on charges made by others, and it may amend complaints at any time prior to order. It has the power to order or to prohibit action, thus exercising the powers of a court of equity as represented by the mandamus and injunction. In the hearing of cases it is not bound by the rules of evidence that apply in courts of law and equity. No right to confront or cross-examine witnesses or present argument is given. Nevertheless, on appeal, or in court proceedings to enforce its orders, the board's findings of fact are made conclusive "if supported by evidence", which means that such findings need not be sustained or proved by a preponderance of the evidence. The board may avoid court review, since it may modify or set aside its orders at any time before a transcript of the record is filed in court.

The board may establish or utilize "regional, local, or other agencies" and "such voluntary and uncompensated services" as may be needed. It may appoint its own agents. It may conduct investigations which it considers necessary and proper, and its agents are given access to and the right to copy "any evidence of any person being investigated or proceeded against" relative to the investigation. It can compel the attendance of witnesses and the production of evidence at any place designated, and any board member or any agent designated may administer oaths, examine witnesses, and so forth. The board, through its members or agents, may "prosecute any inquiry necessary to its functions in any part of the United States" and "a member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the board in the same case."

The proposed board is thus a body which may act as inquisitor, prosecutor, or court, and, moreover, may act in all these capacities in one and the same proceeding. No responsibility attaches to its conduct. In its powers as a court the ordinary rights of parties in civil and criminal actions are not recognized. And finally all of these strange and extraordinary functions and powers may be used against the employer only.

After stating the right of employees to organize and bargain collectively through representatives of their own choosing, the bill enumerates four "unfair labor practices" of which only the employer may be guilty, and it is the prevention of these practices which constitutes one of the chief purposes of the board. This section of the bill is clearly designed to discourage company unions and to render difficult any cooperation between them and the employer. These provisions lend themselves to misinterpretation and uncertainty of application in particular cases. It is an "unfair practice" for the employer to interfere with, restrain, or coerce employees in the right to organize and bargain collectively, to dominate or interfere in formation or administration of a labor organization, or give it financial or other support. Moreover, while it is an "unfair practice" to encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure or condition of em-

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ployment, yet it is provided that the employer may make an agreement with a labor organization "to require as a condition of employment membership therein" if such organization represents a majority of the employees and if it is not an organization maintained or assisted through any of the acts described as an unfair labor practice. This provision obviously opens the door to the closed-shop contract.

Thus far the measure has been largely similar to the original Wagner bill of last year. In the present bill a new and revolutionary feature is introduced in the provision for majority rule. The bill provides that "representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining", etc. In a controversy over representatives the Board may investigate and may certify to the parties the names of the representatives that have been designated or selected. The Board "shall provide for an appropriate hearing" on the question of representatives, but no provision is made for an orderly presentation of evidence or a judicial finding on such evidence. On the contrary, the Board "may take a secret ballot of employees or utilize any other suitable method to ascertain such representatives" in arriving at its decision.

This majority-rule provision would destroy by law the freedom of contract of minority workers, notwithstanding that those who propose this bill have long urged that the worker's right to bargain for his labor is a sacred "personal" right as distinct from the merely "property" rights of the employer.

Perhaps the most mischievous section in the measure is the one in connection with the selection of representatives, which provides that "the Board shall decide whether in order to effectuate the policy of this act the unit appropriate for the purposes of collective bargaining shall be the employee unit, craft unit, plant unit, or other unit." This power to "district" the plant for election purposes is not limited in any way whatever; neither is any restriction provided as to time or manner of elections. In other words, the Board may district and redistrict any given establishment as often and in any manner as it may see fit. One plant may be districted in one way and another plant in another way in the same industry. A single department of a large plant, or a few carpenters or electricians, may become a "unit" for election purposes and may demand a separate agreement, including the closed-shop feature.

If such a plan of elections and districting were applied to our political electoral divisions, chaos would result. Consider its effect upon plants and factories where stability and cooperation are essential to efficient operation.

Finally, the bill provides that "nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike." This is the only provision in the bill relating in any way to the conduct of organized labor. The measure is designed solely to control, restrict, and penalize the employer. There are no restrictions upon the unions in the use of any form of intimidation or coercion. While the bill is clearly calculated to bring about union domination and the labor monopoly known as the "closed shop", no regulation or control of this monopoly is provided. It is well known that unions, in their effort to secure control, and labor leaders, in their exploitation of the closed-shop monopoly when it is obtained, often violate the rights of the public as well as of the employer and even establish systems of tyranny and oppression over their own membership.

Public interest cannot be fully protected or the relations of employer and employee placed upon a sound basis through any legislation which does not recognize the principle of equal rights and equal responsibilities for all parties concerned.

It is strongly believed that this measure is not constitutional. The power of Congress to legislate in the field of labor relations will be more clearly defined when the Supreme Court has passed upon cases now pending. In this troubled time, is it not to the country's interests to await decision in such cases rather than to enact a measure of such drastic and trouble-making character?

WALTER DREW,
Counsel National Erectors' Association.

MARCH 25, 1935.

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PHILADELPHIA TEXTILE MANUFACTURERS' ASSOCIATION,
March 11, 1935.

Hon. DAVID I. WALSH,
United States Senate, Washington, D. C.

MY DEAR SENATOR: As president of the Philadelphia Textile Manufacturers' Association, I am authorized by that body to write to you and ask that the objections of our association be filed with your committee to the Wagner labor-disputes bill, on which hearings have started today.

Our association represents approximately 200 textile manufacturers in and around Philadelphia, employing between 40,000 and 50,000 employees, less than 10 percent of whom belong to any labor unions whatsoever. Approximately 20 percent of the employees involved have been working under their own shop committees, many of them for 10 or 15 years. These shop committees have been highly successful in bargaining with the employees, with the result that Philadelphia has the highest rate of wages of any textile center in the United States, and has been practically free of any labor difficulties. Our association objects strongly to the passage of the Wagner labor-disputes bill for this reason, and for the following reasons:

The collective-bargaining clause of the National Industrial Recovery Act, which is carried into the Wagner bill in more detail, has been provocative of strikes and labor disorders which have greatly held back the national recovery, and if this controversial law is perpetuated in the Wagner labor-disputes bill, it will cause more dissention, strife, and hardship in the future.

The Wagner labor-disputes bill distinctly tries to outlaw company organizations, which is a discrimination against collective bargaining in its most satisfactory form. It tends to force employees, against their will, into organizations which are not of their own choosing.

It is our opinion that employees should be free to join labor organizations of any kind whatsoever. The Wagner labor-disputes bill prohibits coercion on the part of the manufacturer, but allows coercion, by threats of force and violence, by any irresponsible, racketeering labor leader.

The general strike called by the United Textile Workers last September was a travesty on the liberty of American citizens and workers. These labor organizations, with a paid-up membership of less than 5 percent of the employees in the industry, by coercion and violence enforced through their flying squadrons, added names to their list of members and closed down half of the textile factories in the United States. It is notable that since the strike the paid-up membership of this organization has declined to a point below that of the time of the call of the last strike.

In view of the decision in the *Weirton case*, there is great doubt about the constitutionality of such an act as the Wagner labor-disputes bill would be.

I hope that your committee will vote against reporting this act to the Senate Chamber.

Yours very truly,

MILLARD D. BROWN.

NEW YORK, N. Y., *March 29, 1935.*

Hon. DAVID I. WALSH,
Chairman Senate Committee on Labor and Education,
Senate Office Building, Washington, D. C.:

In a speech over the radio last night James J. Bambrick, president of local 32–B of the Building Service Employees International Union, repeated the arguments he presented yesterday morning to your committee in support of the Wagner bill. The record of Mr. Bambrick and his union illustrates one of the strongest arguments against the enactment of this bill. Notwithstanding agreements signed by Mr. Bambrick and the union under the auspices of the mayor and other municipal officers of this city and the Regional Labor Board, strikes have been threatened and called repeatedly in violation of agreements and further strikes were threatened and called to overthrow an arbitration award rendered pursuant to the mayor's agreement. If further strikes or walkouts occur in violation of agreements Mr. Bambrick cannot expect that the property owners affected by such strikes will continue with the agreements. The Wagner bill purports to require employers to deal with such a union where a majority of the employees make the request regardless of the fact that the union announces and practices a policy of not living up to its agreements.

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The Wagner bill also preserves to the union the right to call strikes in violation of arbitration awards rendered pursuant to mutual agreement.

The Realty Advisory Board on Labor Relations protests the enactment of any bill which compels employers to deal with a union regardless of the legality and good faith of its purposes and practices and protests against the unfounded statements made by Mr. Bambrick before your committee as to the labor conditions prevailing in buildings in this city. Wages, hours, and working conditions prevailing in the building service industry in this city are the result of impartial findings based on a thorough investigation of all economic factors and compare favorably with conditions of employment in any industry involving the same standards of skill. Furthermore, there have been practically no cases of discrimination against union men. Notwithstanding the fact that approximately 250,000 building-service employees and agencies for the adjustment of complaints have been established, the union has presented less than 40 complaints, of which two-thirds have proved to be unfounded and the other third corrected immediately without delay or friction. So far as conditions in the building-service industry in this city are concerned, there is no need for a law forbidding discrimination.

REALTY ADVISORY BOARD ON LABOR RELATIONS, INC.

SPEECH BY LOUIS WEINSTOCK ON THE WAGNER BILL AT THE SENATE COMMITTEE ON EDUCATION AND LABOR

I am national secretary of the American Federation of Labor Trade Union Committee for Unemployment Insurance and Relief. I am a good standing member of the Brotherhood of Painters, Decorators, and Paperhangers of America, Local Union No. 848, New York City.

As a representative of the rank and file in the American Federation of Labor I want to record opposition of the rank and file to the Wagner national labor relations bill on the ground that it impedes, hinders, and attempts by delay and other methods to weaken the activities of the trade unions in the United States. Our opposition to this bill is based not only on the fact that the rank and file in the A. F. of L. unions are opposed to any governmental interference in their relations with their employers but also on the experiences which the rank and file has had with existing industrial boards since the N. R. A.

William Green, representing the executive council of the American Federation of Labor, has recently concluded a truce with Mr. Richberg and the Roosevelt administration and is proceeding to forget entirely all of the charges which he made against the Auto Labor Board and against the action of the National Industrial Relations Board under Mr. Richberg's direction. Instead he is acclaiming the Wagner national labor relations bill in the same glowing terms as he did the N. R. A. But Mr. Green does not represent the opinion of the workers in the trade unions, nor did he even see fit to initiate a referendum to obtain an expression of opinion from the membership of them to obtain an expression of opinion from the membership of the trade unions or encourage a discussion on this question. It is, therefore, clear that Mr. Green's position is that of an individual or of a few individuals on the executive council. He does not represent the opinion of the vast numbers of workers in the A. F. of L. unions. The rank and file are totally in disagreement with Mr. Green's policy of preventing and delaying by false promises the strike struggles of the workers to obtain better conditions. They have not forgotten the deliberately misleading and deceptive tricks used to convince the workers who came out on strike in recent months or were ready to strike that the various labor boards throughout the country would improve their conditions without strikes or by returning to work without settlements.

Mr. Green and the executive council have shown themselves to be entirely in sympathy with the administration's position of defeating and preventing the struggles of the workers to win better conditions from the employers. His support of the Wagner labor relations bill is for the purpose of preventing a developing strike movement, which is becoming more and more obvious as the workers continue to feel the renewed and even fiercer attacks on their standards of living.

I have only to mention the mood for struggle which exists today among the auto workers, among the textile workers, among the steel workers and coal miners, all of whom have patiently and willingly waited for the promised im-

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provements, only to find that these have been snares and traps which have led to more intensified speed-up, wage cuts, lay-offs, to blacklisting and discrimination of those who have had the courage to stand up and fight against these conditions.

Mr. Green has again and again urged the adoption of the Wagner national labor relations bill, not only this year, but also last year, as a means of keeping down this strike movement, as a means of smashing and defeating the just demands of the workers. Such acts have resulted in benefits and gains for the employers. No one can now deny the fact already admitted by Government reports that profits since the National Recovery Act have risen while wages have dropped. Nearly 300 companies whose profits are compiled by the Federal Reserve Bank of New York showed for the first 9 months of 3 years the following gain:

1932	$100,000,000
1933	202,800,000
1934	430,500,000

While on the other hand a recent table compiled by the Bureau of Labor Statistics showed a decline of weekly average wages since National Recovery Administration began in June 1933 as follows:

	June 1933	Nov. 1934
Automobiles	$23.05	$22.80
Boots and shoes	15.68	14.51
Tobacco (and snuff)	13.43	12.84
Iron and steel	18.33	17.43
Rubber tires (and tubes)	24.28	22.67
Woolen textiles	16.85	16.25

William Green has declared in his testimony before this committee that "there is growing in the masses of the American people a bitter resentment at the position in which they find themselves, and deep conviction that only their own economic strength will avail them in their struggle against the injustices and the inequalities under which they work." Mr. Green's solution is to offer the workers the Wagner national labor relations bill instead of real leadership in a mighty struggle to compel the employers to return the profits extorted through the continued drive against the workers' wage standards, in the form of wage increases, shorter hours, the abolition of speed-up, and recognition of their unions.

By sponsoring this bill, Mr. Green is trying to continue the fiction that the Government is impartial in its relations to the workers, and that just as in the case of the National Recovery Administration the Government enacts a good law, but the employers are "chiseling."

We declare that this position is a myth, and has been disproven by the actions of the Roosevelt administration in the codes of the auto workers, textile workers, miners, newspaper workers, and thousands of other workers, throughout the country. In every instance where the workers have been compelled to resort to strikes as the only means of remedying their miserable conditions and of maintaining their right to organize, they have seen that Mr. Roosevelt's decisions as well as the decisions of the courts have been dictated by the interests of the employers.

We maintain that there is no separation between the Government and the employers. The Roosevelt government created the instrument of the National Recovery Administration to bolster up profits at the expense of the workers, and is now proposing a new instrument in the form of the Wagner national labor relations bill. The Wagner board to be established by this bill will be a weapon to destroy the power which the workers have gained through their economic organizations by outlawing strikes, establishing compulsory arbitration, and increasing company unions..

In support of our contention that the National Recovery Administration and the proposed Wagner plan have been created to serve the interests of the employers, we have only to refer to the recent actions of the administration in imposing a $50 monthly wage scale on the American workers which will have the effect of widespread wage cutting and the destruction of union standards which have been built up over long periods of years. In this connection, Mr.

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Wagner, the so-called "friend" of labor, and the sponsor of this bill, led the forces back into the administration camp in support of the employers' wage-cutting program repudiating his previous maneuver which enabled him to parade as a supporter of organized labor.

The position of the rank and file in the American Federation of Labor on the Wagner national labor relations bill is concretely as follows:

The Wagner bill is ostensibly for the purpose of creating "equality" of bargaining power between employers and employees. It definitely declares that it is in opposition to strikes, in that these create obstacles to the free flow of commerce and that it is the "policy of the United States to remove obstructions to the free flow of commerce." In other words, it is the objective of the act to prevent the workers from exercising the only weapon which they have which can further their interests and better their conditions, the strike weapon. While it proposes to "equalize" bargaining of the workers with the employers, it is actually concerned with restraining workers from exercising the chief instrument of their bargaining power. It cannot in any sense of the word equalize the bargaining power between employer and employees, for at all times the employers have the aid of the Government, in calling in their armed forces, their military and their other instruments of terror and repression to defeat the workers' struggles. There are no restraints placed upon the employers in this bill.

Methods of terror and repression against workers who have come out on strike to defend their right to organize and improve their conditions have reached a high point in the recent strike struggles. The murders of more than a score of workers in the strike struggles of 1933, 1934, and the injuring of hundreds of others as a result of calling out the National Guard, the declaration of martial law and the rule of vigilantes, as well as the establishment of concentration camps, is still fresh in the minds of thousands of members of American Federation of Labor unions.

The Wagner bill further proposes to create a board of three members appointed by the President who shall have the authority "to make, amend, and rescind rules and regulations as may be necessary to carry out the provisions of this act" with final authority.

While section 15 of the bill declares that "nothing in this act shall be construed so as to interfere with, impede, or diminish in any way the right to strike", the rank and file in the American Federation of Labor cannot recognize this as a guarantee of their rights to strike any more than they can recognize section 7 (a) of the National Recovery Act as a guarantee of the right to organize. We have no confidence in Government boards no matter what name they may carry. These paper guarantees have shown themselves to be more demagogic gestures, which in actual practice have resulted in depriving the workers of their rights through the use of terror in strikes, as well as through the run-around policy of these boards, of promises to investigate, of long delays and final decisions which have resulted in lowering the workers' conditions. As an example we might take the brazen and cruel action of the Government together with the American Federation of Labor officials in misleading thousands of textile workers whose grievances and conditions are admittedly notorious into calling off their strike on the eve of victory and helping the textile magnates of America to protect their profits by continuing the shameful wages and conditions of the textile workers. These rights can be maintained only by the vigilance and determined action of strong trade unions.

The record of the labor boards in the past 2 years have been notoriously antilabor and have encouraged the growth of company unions, the reduction of wages, the lay-offs of thousands in the interests of profits. All of the boards' actions have been characterized by long delays designed to demoralize and destroy the fighting strength and spirit of the workers.

We might state specifically the extension of the automobile labor board which is stimulating wide-spread company unionism, the failure of the steel labor board to order elections for many months, the action of Mr. Richberg and President Roosevelt in upholding the newspaper board's decision to support the discharge of an employee for union activity—this scandalous action dictated by the employers for the purpose of discouraging and preventing the formation of unions among the workers is only one of many similar instances.

In reviewing some 60 formal decisions of the National Labor Relations Board, since it took office in July 1934, the International Juridical Association in its monthly bulletin declares that the enforcement of the Board's decisions have been almost entirely limited to the removal of the "blue eagle", although the

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Department of Justice was compelled to institute an injunction suit against the Houde Co. on November 30, exactly 3 months after the Board's decision (at which time the courts ruled against labor). The decisions have been rendered on an average of 6 months after the industrial disputes arose. The majority rule has unfortunately been distorted in application and construed so as to give the company union still another chance to undermine the right of workers to free self-organization.

On December 31, 1934, the National Steel Labor Relations Board "finally agreed" to grant petition of Amalgamated Association of Iron, Steel, and Tin Workers for an election in Duquesne, Pa. This case, typical of National Recovery Administration stalling, was dragging along since February 1934, when the union first requested an election to determine who should represent the workers in collective bargaining.

The National Recovery Administration coal labor boards, both divisional and national, continue to hand down decisions favoring the operators against the miners.

Both in section 8 (2) and in section 9 (a) of the Wagner bill there are provisos which virtually legalize company unions. Nor is this contrary to Mr. Wagner's own position. For in his speech before your committee, Mr. Wagner has declared that "nothing in the measure discourages employees from uniting on an independent or company-union basis." Mr. Wagner was willing last year when he presented the same bill to permit the revision to enable companies to initiate company unions.

In March 1934 at hearings before the Senate Education and Labor Committee, Mr. Wagner said, "I am for unions so long as men have free choice. I have not attacked company unions, but only company-dominated unions."

The rank and file in the American Federation of Labor see in this bill a threat to their right to organize, their right to strike, and to maintain their standard of living. We maintain that the arbitration measures inherent in this bill are aimed at forcing Government control over the rights of the workers to defeat their interests. In this connection, we might say that the establishment of such an arbitration board, which has the power to rescind and amend its acts are similar to the methods of Hitler, and tends in the direction of fascism.

The rank and file in the American Federation of Labor will repudiate and reject any attempts of the Government and employers to interfere in their rights, and will utilize their economic strength and power to fight for the freedom to organize, to strike to maintain and improve their conditions, and to bargain collectively with their employers without Government interference.

We declare that the establishment of any such board as proposed in the Wagner national labor relations bill will aid and encourage the employers in their open-shop drive against the workers, and in their attacks on wages and conditions of both employed and unemployed.

While we are opposed to any legislation which tends to interfere with the rights of labor, we are in agreement with the proposals made by the Newspaper Guild of New York in establishing certain of labor's rights and declaring illegal certain actions of employers. As outlined by the guild such legislation should secure the employes' right to organize, their right to bargain collectively through representatives of their own choosing; their right in negotiations involving increased labor costs, to inspect the employers' books and records for the purpose of establishing his ability to pay; their right to strike, picket, urge boycotts, and engage in other concerted activities for the purpose of collective bargaining or other mutual aid; advancement or protection; and their right to receive relief payments when involved in a strike or lockout.

This bill should provide that the representatives freely chosen by a majority of employes in a given circumstance should be permitted to bargain for all. It should declare the union shop legal.

We believe it should be declared illegal for an employer:

(1) To interfere with, restrain, or coerce employees in the exercise of their right to form, join, or assist labor organizations.

(*a*) We believe that so-called "employee representation", and all other forms of company dominated organizations of employees (popularly termed "company unions"), should be declared illegal.

(2) To coerce employees in the preparation for, the declaration of, or the maintenance of a strike or other legal concerted activities.

(3) To dominate or interfere with the formation of administration of any labor organization by the use of money or otherwise.

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(4) To encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment.

(5) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony in a labor hearing.

(6) To use any form of the so-called "blacklist."

(7) To conduct, or to employ any one to conduct, a system of espionage upon his employees.

(8) To refuse to recognize or deal with the representatives chosen by his employees for collective bargaining as to wage, hours, tenure of employment, or other conditions, whether or not there is a strike, picketing, or other organized labor activity or preparation therefor.

(9) To refuse to show his books when he pleads financial inability to meet proposals of his employees.

(10) To refuse to enter into a working agreement with a labor organization chosen to represent his employees, once the terms of employment have been agreed upon.

Organized labor will not depend upon legislation only to enforce these rights, but it will use its organized power to compel the employers and the Government to recognize these rights.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., March 26, 1935.

Hon. DAVID I. WALSH,
United States Senator, Washington, D. C.

MY DEAR SENATOR WALSH: I note on page 85 of the printed notes of the hearings before the Committee on Education and Labor of the Senate that it is stated that I handed you a copy of the Executive order (Nov. 15, 1934), which you had asked for the day before, with certain memoranda in connection with the order, and stated that I would not take the time of the committee to read the order. You will remember that the order was not before you on the previous day. It appears, however, from the printed testimony, that the order was put in the record by you (p. 80).

The effect of section 2 of the Executive order was entirely modified by the subsequent correspondence; and the agreement reached by this correspondence was that the status quo before the order was issued should be in effect. Therefore, the record is misleading if it contains merely the Executive order, without the correspondence and the accompanying memorandum explaining the arrangement; and I respectfully suggest that you arrange to have them placed in the record. When I handed you the memorandum it seemed unnecessary to have it put in the record, on the assumption that the Executive order would not be in the record.

I am enclosing you an additional copy of the memorandum and correspondence.

Sincerely yours,

FRANCIS BIDDLE, *Chairman.*

MEMORANDUM ON EXECUTIVE ORDERS

The Executive order of June 29, 1934, referred to yesterday by Senator Walsh at the hearing, creating the National Labor Relations Board and appointing its members, specifically provided that the Board should have "authority to appoint such employees, and without regard to the provisions of the civil service laws, such attorneys, special experts, and examiners as it deems necessary for its own functions and for the functions of such regional, industrial, and special boards as may be designated or established in accordance with subsections 3 (a) (1) and 3 (a) (2) of this order." The Executive order, however, continued: "This power, however, shall not be construed to authorize the Board to appoint mediators, conciliators, and statistical experts when the services of such persons may be obtained through the Secretary of Labor. * * *"

The relationship of the Board to the Department of Labor was defined in section 4 (a) of the Executive order, which authorized the Board to request the Secretary to appoint conciliators and generally to aid the Board in the performance of its duties; and in section 3 (a) which directed the Board to report to the President through the Secretary the activities of other boards; and section 3 (b) which directed the Board to make monthly reports to the President through the Secretary.

To settle any questions which might arise concerning this relationship, Mr. Garrison, the chairman of the Board, and the Secretary executed a joint

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memorandum on July 16, 1934, which provided that the Board should "consult the Secretary of Labor with respect to all major appointments", but should "retain sole control over the hiring and discharging of its employees, and the expenditure of its funds."

The course outlined in this agreement was pursued until the Executive order of November 15, 1934, under which I was appointed, and which provided in section 2: "In appointing and retaining officers and employees, and in incurring financial obligations, the National Labor Relations Board * * * shall act only with the approval of the Secretary of Labor, but this section shall not be construed to give the Secretary of Labor any authority to review the findings or orders of the National Labor Relations Board in specific cases subject to its jurisdiction." This Executive order had not been submitted to any member of the Board before its promulgation, and all of the members strongly objected to section 2, with the result that it was agreed, with the approval of the President, that it should be held in abeyance. Subsequently the Secretary suggested, in view of the fact that Congress would shortly give consideration to legislation affecting the establishment and functioning of the Board, that in operating under the terms of the Executive order of November 15, 1934, we should observe the practice outlined in the memorandum executed between the Secretary and Mr. Garrison. This suggestion was accepted by the Board, and the arrangement approved by the President.

DEPARTMENT OF LABOR,
Washington, January 25, 1935.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C.

GENTLEMEN: In view of the fact that the Congress will shortly give consideration to legislation affecting the establishment and functioning of your Board, I wish to suggest that in operating under the terms of the Executive order dated November 15, 1934, we observe the practice outlined in memorandum dated July 16, 1934, copy of which is attached, unless of course mutually more satisfactory arrangements are consummated.

If the reaction of the National Labor Relations Board to this suggestion is favorable, I shall ascertain whether this proposal meets with the approval of the President and see that you are advised accordingly.

Very truly yours,

FRANCES PERKINS.

SUGGESTED BOOKKEEPING ARRANGEMENTS BETWEEN THE DEPARTMENT OF LABOR AND THE NATIONAL LABOR RELATIONS BOARD

1. Labor Department symbol to be used.
2. Following employees of N. L. R. B. to work in Department of Labor, if space is available, under Department of Labor direction: (A) Miss Turner, bookkeeper, full time; (B) an additional bookkeeper to be employed by the N. L. R. B. or by the Department of Labor, if the latter so desires, charging it against us, to keep pay-roll records and do whatever additional work on N. L. R. B. books the Department of Labor desires; (C) Mr. Glaser, who audits, prepares, and checks vouchers and schedules them for payment.
3. Of the N. L. R. B. accounting staff this leaves only Miss Iverson, who now spends most of her time on routine correspondence, and should spend all of her time on that.
4. Allotment ledger to be kept in present form segregating regional board expenditures.
5. N. L. R. B. to consult the Secretary of Labor with respect to all major appointments, but to retain sole control over the hiring and discharging of its employees, and the expenditure of its funds.

L. K. G.

I concur.

F. P.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., January 25, 1935.

HON. FRANCES PERKINS,
Department of Labor, Washington, D. C.

DEAR MADAM SECRETARY: The suggestion made in your letter of January 25, relative to the practice to be followed in making appointments and fixing sal-

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aries has been considered by the National Labor Relations Board. The suggestion has our full approval.

Cordially yours,

H. A. MILLIS.
FRANCIS BIDDLE.
EDWIN S. SMITH.

APRIL 1, 1935.

DEAR SENATOR: May we, the executive committee of the board of employee representatives of the John A. Roebling's Sons Co., of Trenton and Roebling, N. J., be permitted to submit the following brief for consideration of your honorable Committee on Education and Labor?

We, the undersigned executive committee, representing 4,000 employees of the John A. Roebling's Sons Co., of Trenton and Roebling, N. J., wish to strenuously object to the enactment of Senate bill (S. 1958) introduced by Senator Wagner for the following reasons:

Its enactment would promote conflict and industrial strife which would tend to seriously injure the satisfactory relations which now exist between us and the management.

It would tend to legislate out of existence the employee-representation plan which we have enjoyed for the past 2 years and which we wish to continue because it has provided a happy and successful working arrangement between us and the company.

We feel our best interests can be served by having employee and employer sit down in a friendly and constructive atmosphere and with first-hand practical knowledge of our problems work out a fair and equitable solution.

During the past 2 years we have had 104 cases considered and adjusted, dealing with wages, working conditions, pensions, sanitation, safety, prevention of accidents, housing and living conditions, and recreation.

Our representation plan has proved a most satisfactory method of collective bargaining through representatives of our own choosing, and has been absolutely free of domination or influence on the part of our employers.

The elections have been carried on exclusively by the employees themselves and under rules decided upon by themselves.

Our plan establishes a continuous day-to-day channel of communication between the management and the men and all complaints are quickly heard and adjusted.

For the transaction of such business and the consideration of other matters in a regular monthly meeting, held during working hours, the elected representatives are paid their regular rate of pay for the time lost, which does not exceed more than an average of 3 hours per month.

Any thought of representatives being influenced by such an arrangement is a misconception of the whole idea of the representation plan, and anyone holding such ideas has a very low opinion of the character of the average American workman.

We representatives also hold meetings from time to time outside of working hours and away from the plant, for which we receive no compensation from the company.

The meetings held during working hours and on the outside are never attended by represenatives of management except as requested by the employee representatives.

More than 90 percent of the employees have voted in our elections and there is a very strong feeling among all against any change in our present plan.

We believe that as employees, we should have the right to say who shall represent us. However, the bill would transfer this authority to the National Labor Board who may certify as representatives, men not actually elected by us as employees.

We believe that as employees, we have the right to determine when elections of our representatives shall be held. However, this bill would also transfer this authority to the National Labor Board, who may call elections at their discretion and thus create endless confusion.

We firmly believe our experience under the employee representation plan justifies its continuance without interference of a body such as the proposed National Labor Board or intimidation or coercion by a professional labor union as permitted under the Wagner bill.

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As representatives of laboring men, we ask that you show your interest in us by opposing Senate bill no. S. 1958.

JAMES DILLON, *Chairman.*
JAMES J. CANTWELL, *Secretary.*

STATEMENT SUBMITTED BY THE BROOKLYN CHAMBER OF COMMERCE, BROOKLYN, N. Y.

This organization, since the enactment of the National Industrial Recovery Act, has advised or aided a majority of the 4,000 industries of Brooklyn in complying with its provisions.

In this connection, we have negotiated the peaceful solution of numerous labor disputes on a basis equitable to both employers and employees and in accord with the public interest; have stood before the regional and national labor boards in scores of cases; and have been directly responsible for an early settlement of a number of such controversies before the situation became serious. Thus, our viewpoint on prospective labor legislation comes from practical experience and, we believe, fairly reflects the attitude of a large and highly industralized community.

When the National Industrial Recovery Act was enacted, we were in complete sympathy with the avowed purpose of section 7A to give workers an equitable voice through the principle of collective bargaining. Unfortunately, however, the later misuse of this section has, in a large measure, been responsible for retarding the natural processes of economic recovery.

Recent and current labor troubles have resulted neither from the lack of bargaining power nor inadequate recognition of the right of employees to bargain collectively. Responsibility must be charged, in a large degree, to the selfish and deliberate action of leaders of labor groups—national and local, legitimate and radical—who willfully misinterpreted section 7a to further their own interests; who subordinated the common welfare to their ambitions for power; and who sought to capitalize on the discontent of continued unemployment. And the deeper responsibility lies in the administration's failure to assert itself in this situation and stand four-square upon a definite labor policy. Instead, it is permitted the willful distortion of its objectives.

Thus has arisen probably the most troublous period in the history of American employer-employee relationships. According to reliable estimates, the 18 months following the enactment of the National Industrial Recovery Act witnessed more than 3,000 labor disputes, involving the loss of 32,000,000 working days at a total cost to employees, employers, and the public exceeding $765,000,000.

The Wagner labor-disputes bill may fairly be described as an effort to prolong and make permanent the worst features of Section 7a, without attempting to solve any of the problems which it has caused.

It is predicated upon the false premise that the employers are the enemies of the employees.

The bill can be fairly criticized in many details of careless language and omitted definition. Its constitutionality can be gravely questioned. Its basic unsoundness, however, transcends any possible weakness in specific clauses or interpretation.

In brief, its effect is to turn entire control of labor, and thereby of industry, over to labor organizations, with no adequate protection either for minority workers or for employers, and at the ultimate expense of the national welfare.

We are well aware of the power inherent in any organization, such as the American Federation of Labor, with a membership upwards of 4,000,000. The threat that such an organization might, under the impetus of this legislation, increase its membership to 20 or 30 millions is very real and most alarming. The principle of collective bargaining would be destroyed completely. The economic and social character of the Nation would be revolutionized.

Thus the underlying fallacy of the whole bill is that it does not distinguish between protecting the right to organize and using compulsion to promote unionism. It seeks to extend the scope of the Government's responsibility far beyond the Government's power to discharge that responsibility.

Attention is called to the following specific objections, as related to the employer, the employee, and the question of legality.

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FROM THE STANDPOINT OF THE EMPLOYER

A national labor relations board would be created to supersede any existing labor boards or agencies, with arbitrary powers of enforcement far exceeding those of the present National Labor Relations Board.

The bill specifically compels the employer to abide by rulings of the board under the law, but imposes no additional responsibility or obligation upon labor organizations to compel their observance of the law.

The board is not limited to control over practices which actually occur, but is given authority to use its judgment to intervene where it believes a labor situation is "tending" to "lead to a labor dispute that might burden or affect commerce."

The bill peremptorily restricts the employer in negotiating directly with his own employees.

Such parts as sections 7 and 8 define in detail the rights of employees. But no obligation is placed upon employees to obey a contract or respect an arbitration. To the precise contrary, paragraphs in section 12 expressly authorize employees to defy arbitration with impunity if they so desire.

Section 15 asserts the right to strike under any and all conditions.

If there is a controversy and the National Labor Board orders an election, those workers who leave their jobs and go on strike retain their right to vote.

There is no provision allowing the employer to curb communistic or other radical influences in his own plant.

Under the powers of investigation granted in the bill, substantially every business record of employers would be open to roving investigators.

FROM THE STANDPOINT OF THE EMPLOYEE

Employee representation plans are outlawed, despite the fact that they have largely afforded a desirable means of securing fair treatment for thousands of workers in industries throughout the country. Some of the most effective statements in the recent Senate hearings came from employees in defense of their local organization and in opposition to legislation which would force its destruction and arbitrary replacement by an outside influence.

This legislation legalizes closed-shop arrangements under which 49 percent of the workers can lose their jobs unless they join a labor organization favored by 51 percent.

This principle of majority rule in collective bargaining disfranchises minority groups of employees and deprives them of rightful protection.

Coercion of employees by employers is prohibited, but coercion of employees by labor organizations or fellow employees is not prohibited. Collective bargaining without coercion by employer is a proper right of every employee, but he should also be free from the coercion of the racketeer, the selfish labor organizer, and others who would interfere with his independence in selecting his agent for collective bargaining and in exercising his right to remain at work.

The National Labor Board is given power to decide that a controversy exists and to determine who represents the employees without calling any election.

FROM THE STANDPOINT OF LEGALITY

The constitutionality of the measure has been widely assailed. Practical experience thus far is insufficient to determine whether the Federal Government can legally enter into the realm of industrial labor disputes. A number of recent decisions in the lower courts have emphatically declared such provisions to be incapable of enforcement. The Supreme Court has yet to pass upon the grave question of constitutionality already raised by the N. R. A. litigation. While the bill attempts to meet this question by using vague language about "free flow of commerce", no attempt has been made to restrict its provisions to interstate commerce or to define that term with precision. Enactment of this measure, in the face of these uncertainties, would breed endless litigation and work untold hardship and injustice upon countless industries.

In view of these factors and from an intimate knowledge of what has transpired in industry under the workings of section 7 (a), we are firmly convinced that passage of the Wagner labor disputes bill, as now constituted, would engender unprecedented friction between employer and employee and destroy their sense of mutual responsibility for the settlement of labor disputes, would increase unemployment, and would immeasurably retard economic recovery.

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BRIEF OF INDIANAPOLIS EMPLOYERS OPPOSING THE WAGNER LABOR RELATIONS BILL, S. 1958

Indianapolis is unlike many other large communities in its labor problems. This community has had a long record of peaceable relations between employers and employees, and this, we believe, is one reason why it has been less seriously affected by business and bank failures and extreme unemployment than many other surrounding and similar cities.

That is true because Indianapolis industries have traditionally been open shop. This has not been to the detriment of employees. There are outstanding examples of fine employer-employee relationship among Indianapolis firms. There are few communities where employers have more deeply recognized their obligations, where they have cooperated to the utmost to provide employment and to pay the best wages that their business could stand. One large firm was among the first in the country to go to a 5-day week, without loss of income to employees, and many firms have for a number of years provided group insurance, progressive wage increases, and endeavored to stabilize employment and otherwise improve the position of their employees.

The result is, we believe, that the majority of Indianapolis industrial employees do not wish to be compelled to join an outside union and subject themselves to strike orders with which they do not sympathize. As proof of this, the sporadic efforts that have been made by outside labor organizers to unionize Indianapolis plants have not succeeded, nor have they stirred up the difficulties that would have arisen if there had been strong sentiment for unionism and strong opposition from employers.

Of course, these statements do not apply to every single industry or employer in Indianapolis. There has been some labor difficulty, and one strike occurred over attempts to unionize an Indianapolis plant, but in that case the employees voted by majority vote against the outside organization. The best that outside union organizers have been able to do in this community has been, in comparison with labor troubles elsewhere, negligible.

As a consequence of this our objections to the Wagner bill are fundamental and strong. We see no reason why the Government should undertake to or be a party to creating trouble where none has existed before. This, we believe, the bill would do.

A number of local firms have employee-representation organizations which would be outlawed by this bill. There is no demand on the part of the employees of these firms for this bill. There is no demand on their part for destruction of their organizations and substitution of outside labor unions instead. There is every evidence, on the other hand, of general satisfactory relationship in this community, a relationship which would be wrecked, if this bill passes.

One concern with business in normal times exceeding $1,000,000 annually has had uninterrupted amicable relations with its employees for the past 31 years. Union and nonunion men work side by side, and such a harmonious relationship would undoubtedly be interrupted seriously to the detriment of both the employers and employees, were organized labor invested with the power, which the Wagner bill would confer on it.

The tragedy of disruption of these relationships, of introduction into Indianapolis of the strife and discontent that have so greatly disturbed such communities as San Francisco, Minneapolis, and Toledo and now threaten in Akron is appalling to contemplate. Community upheavals are surely not to be encouraged by legislation.

We particularly object to the provision of section 9 that a majority of employees shall compel all other employees to be represented by the majority's preferred union, and especially do we object to the provision in this section that permits the labor board to determine what are the units in which a majority shall control. We believe this would enable the board to place some Indianapolis firms, for instance, in a unit with firms of the same kind in another community, where labor trouble is rife, and in which case a majority of all the workers in the unit might order action contrary to the wishes and beliefs of the majority of such workers in Indianapolis.

We believe the bill, while it would be used legitimately by ethical labor leaders, would, nevertheless, promote labor racketeering by many others, to the great detriment of the employees themselves.

Unfortunately for the welfare of the country, the bill is set up on the basis that employee-employer labor relations are eternally in conflict. We believe

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such a presumption is not only untrue, but inimical to national welfare. Cooperative relationship is not only much to be desired, but is essential to the national well-being.

You have heard extensive arguments on both sides of this issue. It is not our desire here to repeat them, except so far as that is necessary in showing you how this community would be peculiarly affected, and why, therefore, we are earnestly opposed to the measure. We regard it as unfair, unsound, detrimental to the country, and a distinct bar to the return of prosperity.

Respectfully submitted.

DIAMOND CHAIN & MANUFACTURING CO.,
UDELL WORKS,
INDIANAPOLIS DROP FORGING CO.,
ACME-EVANS CO.,
P. R. MALLORY CO.,
POLK SANITARY MILK CO.,
ELI LILLY & CO.,
J. D. ADAMS MANUFACTURING CO.,
REAL SILK HOSIERY MILLS,
FULTON HOSIERY MILLS,
NATIONAL SILK HOSIERY MILLS, INC.

AUTOMOTIVE PARTS & EQUIPMENT MANUFACTURERS, INC.,
Detroit, Mich., March 28, 1935.

SENATE COMMITTEE ON EDUCATION AND LABOR,
United States Senate, Washington, D. C.

GENTLEMEN: This brief is presented in opposition to the Wagner labor-disputes bill (S. 1958). It is presented on behalf of the 420 manufacturers who are members of the Automotive Parts & Equipment Manufacturers, Inc., and who collectively employ approximately 165,000 employees. This association and its members are opposed to the passage of the above-mentioned bill for the following reasons:

1. Because it imposes unending hardship and expense on the small manufacturer in this industry. The power of subpena given the Board, established by this bill, would force every manufacturer, whether large or small, to come to any point in the United States designated by that Board for the settlement of the smallest labor complaints. The small manufacturer cannot afford either the time or the money for such activities, but on the other hand his business could be ruined by the complaints of a very few unscrupulous employees or labor organizations.

2. Because an employer may not "interfere" or "restrain" or "coerce" or "dominate" or "encourage" or "discourage" the organization of wage-earners but there is no provision whereby wage-earners or labor organizations may not "coerce" or intimidate employers. This coercion and intimidation by labor organizations is not a fantasy. It is a well-known fact. There is no justice in a law which allows one side of a dispute to engage in such practices but specifically prohibits such practices for the other party to the dispute.

3. Because its proposed procedure for hearing and enforcing a complaint denies the elementary principles of justice for the person complained against. The proposed Board is a body which may act as inquisitor, prosecutor, or court, and, moreover, may act in all these capacities in one and the same proceeding. No responsibility attaches to its conduct. In its powers as a court, the ordinary rights of parties in civil and criminal actions are not recognized. And finally, all of these strange and extraordinary functions and powers may be used against the employer only.

4. Because through its election mechanism it provides for minority domination in that "representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining, etc." This provision allows a minority group to dominate when there are more than two candidates for election. Even the National Labor Relations Board in the Houde decision specifically stated that that decision was not to be taken as a precedent for such minority rule. And further, while the bill provides that "any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing", nevertheless those employees not members of the majority group lose their inherent right of "bargaining in respect to rates of pay, wages, hours of employment, or other basic conditions of employment", either individually or through representatives of their own choosing.

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5. Because this bill gives the proposed board the power to "district" a plant for election purposes without limitation. Neither is any restriction provided as to time or manner of elections. In other words, the board may district and redistrict any given establishment as often and in any manner it may see fit. In the same industry, one plant may be districted in one way and another plant in another way. A single department of a large plant or a few carpenters or electricians may become a "unit" for election purposes, and may demand a separate agreement including the closed-shop feature.

6. Because by its provisions it stimulates complaints and excites irritation and resentment in employment relations, whereas such relations, to obtain the most constructive results for both parties, require sympathy, good will and understanding.

7. Because the proponents of this bill forget the continuing demonstration of self-determination and independence which the workmen of the automobile industry are giving in the balloting booths in which they are electing their representatives for collective bargaining; but remember only their wistful utopian which every workman in every village and hamlet of this country gives up his or her rights of self-determination to the paid leaders of organized labor.

8. Because the only way that this act could be workable as a law would be to have the closed shop in every industry and in every plant. Such conditions are not desired by employers, employees, or the general public.

9. Because, if this bill is enacted, the "carpetbaggers" of organized labor will move in on industry, as in another day the "carpetbaggers" moved in on the stricken South, bent on "riot, rape, and ruin."

We request that this letter be included as a part of the record of the hearing on the Wagner labor disputes bill (S. 1958).

Yours very truly,

CLARENCE O. SKINNER, *Executive Secretary.*

ASSOCIATED GROCERY MANUFACTURERS OF AMERICA, INC.,
New York City, April 5, 1935.

Committee on Education and Labor, United States Senate,
Washington, D. C.

DEAR SIR: I enclose a copy of a telegram sent today to the Committee on Education and Labor. I respectfully request that this statement on behalf of the Associated Grocery Manufacturers of America, Inc., be included in the record of the hearing upon this bill.

Cordially yours,

CHARLES WESLEY DUNN,
General Counsel.

Washington, D. C. April 5, 1935.

Committee on Education and Labor, United States Senate:

Associated Grocery Manufacturers of America, representing some 200 concerns engaged in the manufacture of food and grocery specialty products, with an aggregate annual production of $4,000,000,000 respectfully opposes the Wagner Labor Relations bill (S. 1958) and urges that it do not pass for the following and other reasons: First, it is rank class legislation being designed solely to promote the interests of organized labor now representing not more than 10 percent of industrial employees at the expense of employers and other employees not members of organized outside unions; second, it would increase and not diminish causes of labor disputes; third, it would place the United States Government in the position of tacitly sponsoring labor agitation and strikes, which would further retard recovery; fourth, it would foment dissension between management and labor contrary to the best interests of both; fifth, it would perpetuate in Washington bureaucratic meddling with labor relations with disastrous effects on the recovery program

ASSOCIATED GROCERY MANUFACTURERS OF AMERICA, INC.,
CHARLES WESLEY DUNN, *General Counsel.*

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STATEMENT OF JAMES J. BAMBRICK, PRESIDENT OF THE GREATER NEW YORK COUNCIL OF BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION OF THE AMERICAN FEDERATION OF LABOR

The CHAIRMAN. I understand, Mr. Bambrick, that you desire to appear at this time in favor of this bill.

Mr. BAMBRICK. Yes, sir.

The CHAIRMAN. Mr. Noble, are you one of those appearing in favor of the bill with Mr. Bambrick?

Mr. NOBLE. Yes, sir.

The CHAIRMAN. Mr. Bambrick, will you state your full name for the record?

Mr. BAMBRICK. James J. Bambrick.

The CHAIRMAN. What is your address?

Mr. BAMBRICK. Room 1700, no. 1450 Broadway, New York.

The CHAIRMAN. What is your business?

Mr. BAMBRICK. I am president of the Greater New York Council of Building Service Employees International Union of the American Federation of Labor.

The CHAIRMAN. Do you desire to submit a statement to the committee in behalf of this bill?

Mr. BAMBRICK. I have a statement, and it will take me about 5 minutes to present it.

The CHAIRMAN. How many members are there in your association?

Mr. BAMBRICK. At the present time, 120,000 members, but the number of employees in the industry is approximately 325,000.

The CHAIRMAN. You may proceed.

Mr. BAMBRICK. As president of the Greater New York Council of Building Service Employees International Union, representing 16 locals in the city of New York, with a total membership of 120,000 persons, I wish to speak in behalf of the Wagner bill.

The Wagner bill, as we see it, does nothing more than recognize the right of workers to organize without interference from their employers and the right to select representatives of their own choice. These rights, we were told, were given to us by section 7 (a), but after hundreds of times having sought to invoke the apparent rights under that section, we find that we have gained nothing thereby.

Especially is this true in the field in which we are interested.

According to the estimates of the real-estate owners, there are more than 325,000 persons in New York City engaged in building-service work. Their conditions have been miserable. Almost unbelievably so. Let me cite a few specific, typical examples. Eleven men were employed in an apartment house on the west side of New York. Their average week's work exceeded 84 hours. One elevator operator, a man of approximately 44 years, was married, and has six children. For 84 hours' work he was paid the munificent sum of $60 a month, approximately $14 per week. Of course, he could not support his family on this income. His family received food relief. Clothing was furnished by charitable organizations. Free lunches were given to his children in the public schools. The family received medical attention at clinics in the city hospitals. Despite all of this additional aid coming from public-relief agencies.

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charitable organizations, and our city, the children suffered from malnutrition.

The CHAIRMAN. Is there not a law in New York City limiting the hours of employment?

Mr. BAMBRICK. In general?

The CHAIRMAN. Yes.

Mr. BAMBRICK. There is not in this particular industry.

The CHAIRMAN. But there is such a law?

Mr. BAMBRICK. There is in general; yes, sir.

The CHAIRMAN. What is the limit?

Mr. BAMBRICK. For females it is 9 hours a day, and for males it is unlimited.

The CHAIRMAN. Is there any law which reaches this particular group of employees?

Mr. BAMBRICK. No, sir.

The CHAIRMAN. Have you attempted to have it agitated?

Mr. BAMBRICK. Yes; we have.

The CHAIRMAN. With what success?

Mr. BAMBRICK. At the present time with very little success.

The CHAIRMAN. Why is that?

Mr. BAMBRICK. We only started the agitation about 4 months ago.

The CHAIRMAN. How many employees are there in New York who are without protection of the general law limiting the hours of employment in the industry?

Mr. BAMBRICK. In this particular industry I would say it would run up to possibly 200,000 persons.

The CHAIRMAN. Yet you have not been able to get any law for the hours of male employees?

Mr. BAMBRICK. Not at all; no sir.

The CHAIRMAN. Of course, aside from this bill, it is very important for you to try and get a State law, because so long as your hours are left unlimited there can be wide open-shop competition, with the tendency to keep increasing the hours of employment and lessening the wage.

Mr. BAMBRICK. That is just what happened, Mr. Chairman. To give you an example, in one particular classification that exempted janitors, a janitor can work 24 hours a day without having 1 day off, year in and year out. We have thousands of cases in our files where janitors have not left their basement dwelling in a year, and we have a number of cases where workmen have not had a day off in 10 years. That is what we are seeking to correct through our union.

The CHAIRMAN. I am surprised to hear of that condition in New York.

Mr. BAMBRICK. The conditions are scandalous, and we are willing to submit complete evidence to prove our case.

Last Christmas Eve, at midnight, this poor, miserable man left the building on a short relief period to get a cup of coffee. In the place that he proceeded to he saw a man known in that section as an organizer for one of our unions. He spoke to him while he drank his coffee. Returning to the building, he was met at the door by the representative of the owner and at 1 a. m. on Christmas morning was discharged because he had been seen talking to a union representative.

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Another case, in an apartment building, a man who works similar hours, married, and has two children: For his labors he was given an apartment of five rooms in the building in which he worked. A tenant coming in could have rented that apartment for $35 or $40 a month. He was paid by being given each half month a receipt for $25. Not one single penny was paid to him. His only return was two rent receipts each month for $25. To buy the food necessary to keep the family alive, they took in three boarders.

This man had the temerity to join our union. Within 48 hours after he joined the union he was discharged and his family evicted from the rooms that they occupied.

Of course, we promptly complained to the regional labor board in these cases, as well as in hundreds of others of more or less similar facts. There we were told that the board had no jurisdiction in the cases and its hands were tied because of the fact that the real-estate owners had succeeded in defeating any attempt which was made to adopt a code for that industry and in the absence of a code, 7 (a) could not be enforced.

The CHAIRMAN. I doubt very much if this bill would reach these employees, because I think it could hardly be held that a man engaged as janitor in an apartment house was engaged in interstate commerce, so it seems to me your remedy is largely a State remedy.

However, it all pertains to this legislation.

Senator WAGNER. I do not want that to go unchallenged, because I think at the proper time I can persuade anyone that it does.

The CHAIRMAN. You think a man engaged in running an elevator is engaged in interstate commerce?

Senator WAGNER. I think a threatened general strike which would not only tie up apartment houses in that section, but the business section of New York, so that business would be seriously interfered with, certainly tends to dry up the channels of commerce for the time being.

The CHAIRMAN. That is assuming they are all organized.

Senator WAGNER. It is assuming a strike would take place.

Mr. BAMBRICK. I would not dare try to enter into the technical details of interstate commerce or intrastate commerce, but I will say this, that particularly in the garment section of the city, I suppose about 90 percent of the goods manufactured there are distributed throughout the entire country, and I think an elevator operator there is almost in that category.

The CHAIRMAN. You would stop commerce in New York City if you stopped the operating of dwellings.

Mr. BAMBRICK. Yes; and, as a matter of fact, I received quite a few letters from department stores throughout the country prior to the last strike, in which they actually told me they would not come into New York if they thought there would be a srike, and would not order goods if the elevators of the manufacturers were stopped.

Senator WAGNER. Of course, we do not want such a strike.

Mr. BAMBRICK. No; we want to get away from it.

In New York, at least, we find building owners operating and maintaining buildings through the use of workers who, to exist, must have their incomes supplemented through grants and allowances from Federal and city relief agencies and charitable organization.

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In other words, relief funds are being used to permit the building owner to operate his building. It is because our unions have fought the discrimination which is so general in our city that we have been charged by that notorious open-shop parasite, Walter Gordon Merritt, who appeared before this committee a few days ago, with bad faith. Of course, that type makes such charges against all who seek to better living conditions of the workers of his clients.

There are 120,000 members in our 16 local unions. If the fear of discrimination was removed, not only would our membership double but we would be able to do throughout the entire city what we did accomplish in one particular area where full recognition was secured. There we reduced hours from 60 hours a week to 48.

I might mention in this particular connection this area I have just referred to, that disagreement was settled through intervention of the National Labor Department, through arbitration, and we signed a closed-shop agreement for approximately 640 buildings, involving 5,000 men, in the garment, fur, and millinery trades. We secured a 48-hour week there where it used to be 60 hours, and secured wages of an average of about $23 a week, where they had not been paid but $19 per week.

Since the time of signing this closed-shop agreement, we have had only two complaints from that district where the industrial business exists.

We secured an increase for all of the workers. In short, we brought about a condition where the building owner who utilizes the service of the worker, paid him sufficient to support himself and his family and removed thereby from the rolls of the relief agencies and charitable organizations, hundreds of workers in these buildings.

Moreover, and of this we are very proud, through reducing hours and bettering conditions in one comparatively small area, employment was created for more than 400 additional men and women.

This was in the district bounded by Forty-first Street on the north, Fourteenth Street on the south, Fifth Avenue on the east, and Ninth Avenue on the west.

But, of course, in thousands of other buildings, efforts to duplicate this achievement are being fought and the chief means is by intimidating the workers into staying out of the unions. Here are some examples of a few advertisements that regularly appear in our New York newspapers:

Elevator operators, experienced, for uptown apartment house; salary $70 month (nonunion). Write giving references and experience, owner, G. H. 167 Times.

In this connection, we have supplied some men in our organization, and the location of this building is 124 East Eighty-fourth Street. The owner has notified them that if they do not get out of the union they are all going to be discharged on the 1st of April. I have the letters here and also the original clipping of the advertisement, which I submit to the committee.

We know the buildings that this help is sought for. They are buildings in which every worker is a member of the union. We submit to you letters from the workers in those buildings pleading to be saved from the fact which to them seems almost to be inevitable.

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Our membership will not stand by and see their only hope for relief wiped out by these tactics. If we are left to the sole recourse of strike, then strike it will be, and New York City will witness the most widespread strike it has ever seen.

As president of the New York council, I have been requested by our members to call a mass meeting tomorrow night at which time a strike vote to affect the entire city will be considered. The only hope we hold forth to these men is that protection will be granted to them, such protection as is set forth in the Wagner bill.

If a strike comes about, let no man condemn us for paralyzing the commerce of the city. Let no one charge us with bad faith. The responsibility must be placed squarely and fairly on the shoulders of the real-estate interests who have brought it about, rejecting every overture and effort by us to merely permit their workers to have the rights which no man to my knowledge, has stood before this committee and said they should not have.

They have reached the breaking point. Conditions are so intolerable and discrimination so widespread, that hundreds of thousands of these men have reached that stage where they must either be protected by the Government in their rights, or they will go out and protect themselves. If they can see no hope through the adoption of the Wagner bill, the lines will break and industrial conflict unparallelled in the history of New York City, will ensue.

I plead for the adoption of the Wagner bill, because in my honest opinion if this persecution and discrimination continues I fear you will have strikes by the thousand in the city. There is only one hope for preventing that, and that is to be permitted to select representatives of their own choosing. We have hundreds and hundreds of landlords in New York City who have told the men if they do not get out of the union, they will be fired.

We appeared before the regional labor board, and they told us there is no code, consequently they have no jurisdiction, and these men can go nowhere. They are practically persecuted, they are told to get out of the union or be fired.

The only way they can improve their lot in life is by collective bargaining, and there is no law to do that, because they have not that right, and we therefore plead in behalf of the Wagner bill. We feel that is the only protection they have, and we hope you will adopt it.

BRIEFS

INTERNATIONAL BROTHERHOOD OF BOILER MAKERS,
IRON SHIP BUILDERS, AND HELPERS OF AMERICA,
Cleveland, Ohio, March 30, 1935.

Senator DAVID I. WALSH,
House of Senate, Washington, D. C.

DEAR SENATOR WALSH: During my visit in Washington this week I was interested very much in the Wagner labor bill. I was talking to Senator Wagner Wednesday and intending to go on the witness stand Thursday morning at 10 o'clock. He said he would talk to you as chairman and decide whether I would be able to testify.

I laid my card on the table Thursday morning, which I believe you will remember, but the rubber industry and the glass industry were presenting their side of the story and I was not able to testify. After the meeting adjourned Thursday at 4 o'clock, if you will recall, I was talking to you after you came out of the committee room, and I told you at that time, that I could not be in Washington any longer but would have to return to Cleveland,

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and you told me to write you any statement I wished to make on behalf of the Wagner dispute bill.

Now, Mr. Chairman, I do not believe that I need discuss this bill which is pending before you, because you can see the conditions existing and the wages paid by the statements made by the different manufacturers and so-called "company unions". They say that 90 percent of the manufacturers satisfy their employees regarding conditions and wages as they exist under the present system. Now, Senator, I wish you would have occasion to go through the factories of the steel industry and see for yourself what conditions exist and what wages are paid. In 90 percent of the industries in the United States the conditions are not fit to work under, and the wages are away below what they should be. This is why the manufacturers fear the Wagner dispute bill because the laborer would get a fair deal, good conditions to work under, and good wages. My local lodge is 100 percent for the Wagner labor dispute bill.

For a short time before I entered into the railroad industry I worked in the steel industry both in Cleveland and St. Louis, and if I had said anything in regard to organization or called a committee to advocate a labor union, I would have been dismissed immediately. At this time I am vice president of Local Lodge 744.

I would like to give you other points in this matter but I feel you already have too much to contend with, but Mr. Chairman, please give this bill fair consideration.

I appreciate the courtesy you showed me while I was in Washington. You may not remember me but I believe you will.

Yours very truly,

THOMAS ALJINOVIC.

STATEMENT ON THE PROPOSED NATIONAL LABOR RELATIONS SUBMITTED BY HERMAN FAKLER

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: My name is Herman Fakler. I am the Washington representative of the Millers' National Federation, the national trade association of the wheat-flour milling industry.

The alleged purpose of the Wagner labor disputes bill, S. 1958, is to promote equality of bargaining power between employers and employees, and to eliminate the causes of labor disputes.

Every fair-minded employer and employee is in sympathy with that objective. It is, and always has been, the aim and purpose of employers in this industry to maintain friendly relationships with their employees and they have been successful in that respect.

It would be difficult to draft anything more perfectly designed than this proposed legislation, to achieve exactly the opposite effect and to remove entirely the direct and friendly relationship existing between employers and employees.

The bill makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the right of self-organization and collective bargaining.

Employees should have the right to bargain collectively without coercion, but this bill gives the employee no guarantee of freedom from coercion, restraint, or interference of and by professional-labor organizations and organizers.

The employee should be free from coercion from any source whatsoever.

Employees should have the right to form or join any labor organization of their own selection. Likewise, they should have the right to refrain from joining any labor organization. This bill does not give them that right.

Employees should have the right to select freely their representatives for the purpose of collective bargaining. This bill makes it mandatory that the representatives designated or selected by the majority of the employees shall be the exclusive representatives of all the employees in respect to rates of pay, wages, hours of employment, and other conditions of employment. The minority would have only the privilege of presenting "grievances" to their employer.

This, in our judgment, deprives members of the minority of their constitutional right to bargain for their own labor on their own terms and opens the way for complete domination of labor by professional organizers and organizations.

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The bill proposes to grant a broad charter to professional labor organizations without any safeguards as to their legal and financial responsibilities. If the Federal Government is to give such organizations complete control over the destinies of employees, as is proposed in this legislation, the Federal Government is derelict in its duty to protect those employees if it does not require such organizations to be responsible legally and financially for their actions.

We believe that the regulation of labor relations is not a proper function of the Federal Government. It is extremely doubtful if the Federal Government has the wisdom and the power to control intelligently and effectively the rights of individuals to the extent proposed in this legislation.

STATEMENT OF PUBLIC AFFAIRS COMMITTEE, NATIONAL BOARD, Y. W. C. A.

For many years the national Young Women's Christian Association has upheld the right of workers to organize, and at its last convention in Philadelphia in May 1934, it reaffirmed that right and adopted the following practical program:

"To uphold the right of all individuals to organize for their own and the common good, giving practical aid and encouragement especially to those groups which the Young Women's Christian Association has discovered from its own experience to be most in need of assistance, namely, industrial, household, and white-collar workers in their efforts to build a vigorous and responsible labor movement * * *."

The convention also endorsed the principle of "the right of employers and employees to organize for collective bargaining and social action."

The Young Women's Christian Association has had ample opportunity of watching the effect of section 7 (a) of the National Industrial Recovery Act on the work life of its members. While in many instances employers have abided by section 7 (a), many association members know from intimate experience that others have not done so; and that thousands of workers have been penalized because of their membership or interest in trade unions.

In Y. W. C. A. summer and week-end conferences, in discussion groups and forums this subject has been of paramount interest. Girls have borne witness to their experience of the failure of various methods to improve the conditions under which they work, limit the hours of their labor and assure them a living wage. They have seen their employers continue to form associations without restriction, for their mutual benefit. The workers seek no favored position, but they ask that they too may be granted an equal opportunity to form associations of their own for their mutual benefit and to choose their own representatives for the purpose of collective bargaining.

Senator Wagner has stated in the bill, as drafted, that the denial of the right to bargain collectively through representatives of their own choosing frequently leads to serious labor trouble and a consequent interruption of the free flow of commerce. The National Business and Professional Women's Council, representing a constituency of 127,738, and the National Industrial Council, representing a constituency of 86,425, are in accord with Senator Wagner at this point. Many of these young business and industrial women have suffered severely during the economic depression. They are anxious for a life which shall hold for them some measure of security. They ask for the right to work for that security, to appoint representatives of their own choosing, free from coercion and intimidation by their employers, to meet the latter and work out with them, when necessary, problems affecting their work lives. They believe that only by open negotiation, coupled with true collective bargaining, can industrial peace be secured.

The public affairs committee of the national board, Young Women's Christian Associations, believes that the provisions of the Wagner national labor relations bill are in line with their national convention actions quoted above, and it is, therefore, offering the above testimony in support of the principles of the bill.

Mrs. KENDALL EMERSON,
Chairman, Public Affairs Committee.
Mrs. ALLAN K. CHALMERS,
Chairman, Subcommittee on Economic Section.

The CHAIRMAN. The committee stands adjourned until tomorrow, Tuesday, at 10 a. m.

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NATIONAL LABOR RELATIONS BOARD

TUESDAY, APRIL 2, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met, at 10 a. m., in room 318, Senate Office Building, Washington, D. C.

Present: Senators Walsh (chairman), Thomas, Murray, and Metcalf.

Also present: Senator Wagner.

The CHAIRMAN. The committee will come to order. Mr. Collins wanted to come back on the stand for 5 minutes. You will please come forward and give your full name.

STATEMENT OF JOHN J. COLLINS, OF NEW YORK CITY

The CHAIRMAN. You testified previously in this hearing?

Mr. COLLINS. Yes, Senator; that is correct.

The CHAIRMAN. The evidence you gave at that time is in the record.

Mr. COLLINS. I think it is, Senator.

The CHAIRMAN. What date was that?

Mr. COLLINS. The 25th of March.

The CHAIRMAN. You have some further suggestions you would like to make to the committee?

Mr. COLLINS. Yes; I have.

The CHAIRMAN. You may proceed.

Mr. COLLINS. From the developments in the past week or so I felt possibly in view of the appearance of the other men who were down here from other company unions that it was not made sufficiently clear to the members of this committee just how important a company union is in the institutional set-up of a corporation. I thought probably they did not get the real idea of the function of a company union in a company. I therefore prepared a little talk last night, and since I could not memorize it, will you allow me to read it?

The CHAIRMAN. Yes; you may proceed.

Mr. COLLINS. Mr. Chairman, I was at a dinner the other night and in the course of conversation with the gentleman next to me I mentioned my contemplated trip to Washington to appear in opposition to the Wagner bill.

His sincere rejoinder was, "If you ever intend to go into politics, this is a very foolish move on your part; it would sound your death knell; you would never get labor's vote."

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Well, in answer to that I said that I might first remark that at present I am not contemplating entering politics, but if I ever do I trust to God that I will have a higher motive than mere political expediency and currying to the whims and caprice of organized minorities.

Before discussing this proposed legislation I would like to make this admission, which by now is common knowledge, namely, that the selfishness and shortsightedness of the bourgeois in its early phases created the unethical and psychological conditions favorable to friction and discontent.

The history of certain corporations in dealing with labor has been an unbroken series of exploitation. However, there are incidents in the history of our own Government which parallel these. Do we therefore decide to disown our Nation and destroy its entire structure, or do we rather endeavor to exercise those meretricious elements in it and guide it to the more beneficial channels? Obviously we do the latter.

Now, the modern corporation is a natural institution; that is, it is the result of the exigency on the part of certain individuals to achieve certain ends, which ends are impossible of achievement without some form of cooperative enterprise.

In the attaining of that purpose the rights of and obligations to a certain group in that enterprise—namely, labor—were lost sight of. Here we have the raison d'être of the outside union—not a natural growth, mind you, but a mushroom growth, whose appearance was due to the improper orientation of the corporation as regards the relations of the members of it. Now, we are at the crossroads.

On the one hand, business corporations, which, although economic institutions, are now realizing that they have a social service as well as a profit-making function, and that the economic security of the worker is one of the obligations of capitalism.

One of the modes of bringing this about is the company union. On the other hand, we have the outside union, borne of the failure of the corporation to live up to its obligations, predicated on contention, with its appetite and greed for power whetted by an occasional strike victory gained by force.

Insofar as the corporation is becoming more conscious of its obligations to society and the integral relations of the stockholder, management, and labor are receiving the proper emphasis, the outside union should be on the wane.

However, in the years of its existence, a hierarchical officialdom has arisen, which, for obvious reasons, doesn't care to be deposed; in other words, lose their jobs, and so they have not only promised everything under the sun to labor as a reward for affiliation but have also conducted a violent campaign of opposition to the company union.

There is an undeniable existence of ever-changing, yet perennial, friction between social interest, yet this does not approach or signify the existence of a radical antithesis between two classes, employer and employee.

To eliminate this friction which necessarily will exist to a greater or lesser degree wherever human beings are in contact with each

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other in different positions, you would develop and expand outside unionization, but do you realize, Senator, what this means?

I will tell you what it means; it means class warfare, because by creating a sharp dualism between the historical natural consciousness and the proletarian class consciousness you are undermining that common consciousness and will, which is the foundation of our democracy.

I know you will maintain, and I know your reputation well enough to believe you are sincere in maintaining that such is not your desire. You merely want to see the worker get a square deal. But a square deal is not a new deal. It is the oldest deal in the world.

To prove to you that legislation such as this will lead inevitably to class warfare I will ask you to read the article on labor in the magazine section of last Sunday's New York Times. The writer points out the struggle for leadership between the old-line conservative labor leader and the new radical communistically inclined one. Now, anyone who is familiar with the situation on the labor front knows the direction in which the wind is blowing—toward the one big union idea.

I can also quote General Johnson to that effect, or George Sokolsky, the writer. The handwriting is on the wall, the field is fertile for such a move, and once it starts they will all jump aboard the bandwagon and you, Senator, will derive very little satisfaction from the knowledge that you helped them, especially since their objective under Communist leadership will not be industrial peace but political war. You listened last year to Robert Dunn, of the Communist Union, and their political aims are well known.

I am not endorsing unequivocally all company unions; some of them are rotten to the core; but the company union where there is freedom of election and where the final appeal rests with an arbitration board outside of the company is a real instrument for collective bargaining and allows the men, as a professor of mine in the graduate school at Fordham University said, "To think things through rather than fight them out."

In closing I will ask you to look at Europe, blinded by hate unamenable to reason, ready for the greatest catastrophe this world has ever seen. The Pope only yesterday appealed to the world for prayers to God to grant better times to mankind.

There is a hatred of nation for nation. How much greater is the hatred engendered by class warfare within a nation. We tasted once of civil war; please God may it be the last. Let us join with that great leader whose words are engraved in marble in the Lincoln Memorial only a short distance from us:

> With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in; to bind up the Nation's wounds; to care for him who shall have borne the battle and for his widow and his orphan—to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.

The CHAIRMAN. Thank you, Mr. Collins. Will the next gentlemen please come forward; Mr. Nance, I believe?

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STATEMENT OF A. STEVE NANCE, OF ATLANTA, GA., LEGISLATIVE REPRESENTATIVE OF THE GEORGIA FEDERATION OF LABOR

The CHAIRMAN. Will you please give your full name for the record?

Mr. NANCE. A. Steve Nance.

The CHAIRMAN. Where do you reside?

Mr. NANCE. Atlanta, Ga.

The CHAIRMAN. What is your official title?

Mr. NANCE. Legislative representative of the Georgia Federation of Labor.

The CHAIRMAN. Have you a statement which you would like to leave with the committee?

Mr. NANCE. I have not prepared a statement, Mr. Chairman.

The CHAIRMAN. How many members of the American Federation of Labor are there in Georgia?

Mr. NANCE. Approximately 70,000.

The CHAIRMAN. How many employees are there in the industries of Georgia?

Mr. NANCE. I would say, off-hand, 225,000.

The CHAIRMAN. You may proceed, Mr. Nance.

Mr. NANCE. Mr. Chairman, I am speaking specifically for Georgia but generally for the South. We have found that under section 7 (a) of the N. I. R. A. the benefit of collective bargaining has, generally speaking, been absolutely denied to the workers of our section.

In the textile industry we have had some 50,000 members, and with one single exception we have been unable to have a single manufacturer in that industry to comply with the law and bargain with their employees.

The CHAIRMAN. Do you mean to assert that no employer except one in all Georgia will meet and confer with representatives of his employees for the purpose of collective bargaining?

Mr. NANCE. In the textile industry; yes.

The CHAIRMAN. You make one exception?

Mr. NANCE. Yes.

The CHAIRMAN. How many textile-manufacturing plants are there approximately in Georgia?

Mr. NANCE. I think there are 340, in round figures.

The CHAIRMAN. So that 339 employers refuse to receive any groups of their employees for the purpose of discussing wages, hours of work, and general working conditions?

Mr. NANCE. They receive their employees usually, but they refuse to bargain with them, without exception. What I mean by bargaining is bargaining to a conclusion.

The CHAIRMAN. They do receive them, but it does not result in any agreement being reached.

Mr. NANCE. That is correct. In some instances they will adjust disputes or attempt to make some disposition of grievances, but so far as entering into collective bargaining and setting up mechanism by which disputes can be settled and controversies avoided, they will not do it.

The CHAIRMAN. What efforts have you, with labor organizations in the textile industry, made to advance and increase the wages of

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your employees to the standard of wages paid in cotton mills in the North?

Mr. NANCE. We have attempted, in presenting agreements, to secure advances upward, but in no instance have we been able to even secure an agreement for the wages then existing.

The CHAIRMAN. Is it a fact that you recognize, as a representative of organized labor, that there is a substantial difference in favor of the employees in the wage scale in the cotton mills in the North compared to the South?

Mr. NANCE. It is a fact there is a material difference in the actual wages that are paid.

The CHAIRMAN. How much is that average in the different scales among the different groups, or classification, perhaps, is a better word.

Mr. NANCE. Taking the industry as a whole, my opinion would be that the difference would run at least 15 percent or more.

The CHAIRMAN. That is outside of the minimum-wage classifications?

Mr. NANCE. Yes, sir.

The CHAIRMAN. Has your organization presented to the employers the wage scales of the North and tried to have an equalization of the same?

Mr. NANCE. We have not gone that far, because we have not been able, as I said a moment ago, to get them to enter into any kind of an agreement.

The CHAIRMAN. You talked about that to them; wouldn't they listen to you?

Mr. NANCE. They would hardly listen to equalizing with the North when they will not listen to an agreement on the wages that are now paid.

The CHAIRMAN. What about the wages in the South; are they being reduced?

Mr. NANCE. Yes, sir.

The CHAIRMAN. How general is that?

Mr. NANCE. I think from our experience and contact that the drive is now on to reduce them throughout the entire industry.

The CHAIRMAN. Why do you say that?

Mr. NANCE. We have a case before the Textile Labor Board today where a general reduction has been arbitrarily put into force by the largest manufacturer within our State.

The CHAIRMAN. You think that indicates there are going to be general reductions?

Mr. NANCE. Yes, sir.

The CHAIRMAN. Another question: You know, of course, in a general way, the nature and terms of the code which was promulgated for the cotton-textile industry?

Mr. NANCE. Yes, sir.

The CHAIRMAN. And you know there are minimum wage rates provided for in that code?

Mr. NANCE. Yes, sir.

The CHAIRMAN. It is often alleged that the insertion of the minimum wage without the insertion of any classification of wages in the higher brackets in the more skillful occupation has resulted in tending to pull down the wages in the higher brackets toward the

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minimum, and the minimum has by some employers been interpreted as the maximum.

What is your observation with regard to that?

Mr. NANCE. My observation is that the tendency in all industry, and particularly in the textile industries, is to make the minimum the maximum.

May I give an illustration there? The code as first approved provided that the differentials existing between the various classes of employees should be maintained, but shortly after that was approved the manufacturers submitted to the administration a proposal to change the provision of the code which specified that the differentials existing between the various classes should be maintained up to $30 a week, and to read that the differences existing over the minimum wage should be maintained.

For example, if the lower bracket of employes was $8 a week, the minimum was $12, which meant a raise of $4. The original wording carried the $4 with each class as it went up, and we thought the approval of the administration still necessitated that increase.

However, on the interprtation of the owners, they have not increased any of the wages above $12, except possibly with minor exception. The employee who was making $8 was increased to $12, but the employee who was making $13 or $15 has remained at that figure, instead of receiving a corresponding increase.

The CHAIRMAN. The hours of employment were reduced in the code.

Mr. NANCE. To 40; yes.

The CHAIRMAN. Did the employer not continue to give the same wages the employee had received formerly for the lesser hours?

Mr. NANCE. Generally speaking that is true, but the wages received previously for the longer hours were in the meantime under the minimum of the code, and the skilled workers in this industry have been the workers that have been penalized by the differentials that always existed between the unskilled or common labor, and the semiskilled and skilled labor.

The CHAIRMAN. Has it been your observation that the wage limitation in the code has generally been lived up to?

Mr. NANCE. We know of considerable exceptions in Georgia. I think the most accurate figures that have been obtained was under the survey made by the Government, which indicated there were violations of the minimum-wage provision amounting to about 2 percent.

The CHAIRMAN. Are you a member of the regional compliance board?

Mr. NANCE. Yes, sir.

The CHAIRMAN. How long have you been in that capacity?

Mr. NANCE. I have been a member of the regional labor board since its inception. I have been a member of the regional compliance council since it was established in Atlanta.

The CHAIRMAN. Do these cases come within the jurisdiction of your board?

Mr. NANCE. No, sir.

The CHAIRMAN. What are the functions of your board?

Mr. NANCE. Our board handles all cases except automobile, oil, steel, and textile.

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The CHAIRMAN. What kind of cases?

Mr. NANCE. In the construction industry, for instance. The cotton-garment industry, and various and sundry other industries.

The CHAIRMAN. What problems do you deal with, labor problems?

Mr. NANCE. Labor problems before the Labor Board.

The CHAIRMAN. As a member of the Labor Board you deal with labor problems?

Mr. NANCE. Yes, sir.

The CHAIRMAN. Have you had some of these problems before your board?

Mr. NANCE. Not in the textile industry.

The CHAIRMAN. Why haven't you had any before you in the textile industry?

Mr. NANCE. All of the labor problems in the textile industry are referred to the Textile Industry Board.

The CHAIRMAN. I see, they have a separate board under their code?

Mr. NANCE. Yes, sir.

The CHAIRMAN. So that you only have the problems that arise in other industries?

Mr. NANCE. Yes, sir.

The CHAIRMAN. So that you only have problems that arise in other industries.

Mr. NANCE. Yes, sir.

The CHAIRMAN. You have indicated that the employees were unable to get decisions when they made their complaint before the Labor Board?

Mr. NANCE. Yes; I wanted to touch on that if I might.

The CHAIRMAN. We would be glad to have you do so.

Mr. NANCE. Speaking with reference to the Textile Labor Relations Board, we had a case before that Board in Washington in November involving the reinstatement of a number of employees who had been locked out after the strike. At the hearing the Textile Labor Relations Board reached an agreement with the employer that he would return to work the president of the union involved in this case together with the other members who were out.

That was in November 1934, and today the president of that union has not been returned to work. The employer states he will not return him to work, and we have been unable from November until today, 6 months, to secure a decision from the Board.

The CHAIRMAN. When did you have the hearing before the Board?

Mr. NANCE. During the month of November 1934.

The CHAIRMAN. And you have had no decision from that up to this time?

Mr. NANCE. No, sir.

The CHAIRMAN. Who are the members of that Board?

Mr. NANCE. Judge Stacey, Admiral Wiley, and Colonel Douglass.

The CHAIRMAN. Have you asked them for a decision?

Mr. NANCE. Yes; we discussed the matter with them yesterday, and they said a decision would be rendered very soon.

The CHAIRMAN. In the meantime those men are unemployed, who have been discharged, as they think, improperly.

Mr. NANCE. Yes, sir; we have one other decision in that connection I would like to call to your attention, that has been rendered by

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this Board. It is in the case no. 12, the Southern Brighton Mills, of Shannon, Ga.

The CHAIRMAN. Mr. McGregar, is this Board functioning under your Commission?

Mr. MCGREGAR. It is a board set up by the President under the Presidential order. There is a provision in the order setting up the Textile Labor Relations Board, but as to matters of law we act upon them.

Mr. MCGREGAR. There has been no decision in this case; therefore, there could be no appeal.

The CHAIRMAN. Has this case been referred to you?

Mr. NANCE. I will be as brief as I can with this, and just give you the main facts. This is case no. 12, dated March 18, 1935, in the matter of Southern Brighton Mills, Shannon, Ga. I will skip some of the paragraphs and just read a part of this, and reading from the decision of the Board itself, it says:

> The union organization was begun at the Southern Brighton Mills a year or more before the strike in September 1934. It was the first strike ever experienced there. The evidence indicates that the union included in its membership an overwhelming majority of the employees.

Now, skipping several paragraphs, I read the following:

> The militia arrived on Sunday, September 23, and remained until the following Saturday. Nineteen strikers were placed under arrest by the militia, carried to Atlanta and held some time. No charges were preferred and they were released.
>
> No further explanation of the arrests appeared in the record.
>
> After the strike was over, and they returned to work in this mill, employees of the mill in key positions, nonunion employees, formed a gang which is designated in this record as the "picker-stick gang", taking the picker stick in the mill * * *
>
> The picker-stick gang went into the mill and watched the union employees while they were at work. The management wanted the members of the gang not to let it happen again. Thereupon they laid aside the picker sticks and waited on individuals in a group, assembling them one at a time to receive their pay. Six employees were thus run out of the mill. The group passed up and down the mill in full view of foremen and officers in charge, and waited at the office while the employees received their pay. * * *
>
> The management testified it was helpless to remedy the situation, that the only means of discipline at hand was to discharge the members of the group, and that the discharge of so many holding key positions would have necessitated closing the mill.

From the foregoing the Board has found that the employees working in the mill attending to their duties were physically ejected from the mill.

The CHAIRMAN. By whom?

Mr. NANCE. By the nonunion employees holding the key positions in the mill. They also found that the management did not discipline those employees for the physical force used and the ejection of the union employees. Yet the Board, after these employees had been unemployed for 4 months, instead of returning those employees to work with pay for the time they had been out of employment, made the official decision that they should be put on a preferential list and given employment as rapidly as conditions will permit. They state that there should be included in the preferential list those employees who were run out of the mill by the picker-stick gang, and then they set out their names in full.

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The CHAIRMAN. Did you make any criminal complaint against those employees that assaulted other employees?

Mr. NANCE. There has been one charge made, as I understand.

However, the point I was making is that this Board officially found that the people were taken off of the job in the mill by force, but instead of returning them to the position and paying them for the time they had lost, merely placed them on a preferential list which would mean that they may get a job, and they may not.

There is only one further thing I would like to say. That is, that numerous employers in Georgia in various industries are such that we have been able to negotiate agreements with them satisfactory to the employees and to the management, and without exception those agreements are proving satisfactory to the employer and to the employee.

We find that the opposition to the Wagner bill, in the main, comes from those employers who have refused to comply with section 7 (a) of the National Industrial Recovery Act.

I thank you for the opportunity of appearing before you.

The CHAIRMAN. Are there any other witnesses who want to file briefs or appear before the committee?

Senator WAGNER. Mr. Chairman, before we proceed further, may I have the privilege of reading into the record a copy of a letter which has just been put into the record of the Munitions Investigating Committee, because it relates to the Wagner bill?

The CHAIRMAN. Certainly, you may have that permission.

Senator WAGNER. This is a letter dated June 16, 1934, on the letterhead of the United States Steel Corporation, 17 Broadway, New York, office of the vice president. The letter is addressed to Mr. L. H. Corndorf, president of the Federal Shipbuilding & Dry Dock Co., Corning, N. J. The letter reads as follows:

DEAR MR. CORNDORF: I am returning herewith Senator Barbour's letter to you and apologize for the delay, but I have been in Chicago, Erie, and Pittsburgh since its receipt.

My guess is Congress will today pass the joint resolution proposed as an alternate to the Wagner bill, and that will end for the time being at least many of our troubles in that respect.

Personally, I view the passage of the joint resolution with equanimity. It means that temporary measures which cannot last more than a year will be substituted for the permanent legislation proposed in the original Wagner bill. I do not believe that there will ever be given as good a chance for the passage of the Wagner Act as exists now, and the trade is a mighty good compromise.

I have read carefully the joint resolution, and my personal opinion is that it is not going to bother us very much. For one thing, it would be necessary if the newly formulated boards are to order supervised elections in our plants, that they first set aside as invalid the elections just completed. I do not think this can be done.

If in 1935 our elections should occur in the second half of June rather than the first half, the Board would automatically be legislated out of existence before that date. If they try to horn in on us in any situation in the management, I think we have our fences pretty securely set up.

Therefore, and for other reasons I am in favor of compromising by not opposing the passage of the joint resolution. This, of course, is my personal opinion. I have not yet had a chance to clear it up with our people.

Yours very truly,

A. H. YOUNG,
Vice President United States Steel Corporation.

The CHAIRMAN. Mr. Emery, if you will come forward, we will be glad to have you continue.

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STATEMENT OF JAMES A. EMERY—Resumed

The CHAIRMAN. Mr. Emery, I rather gathered from the committee questions we all asked when you were on the stand before, that you would prefer now to make your argument and then have our questions submitted afterwards, rather than be interrupted as you go along.

Mr. EMERY. Whatever suits the convenience of the committee. I would like to make a connected statement, then subject myself to any inquiries you may have. However, if I make any statement which is questioned I gladly submit to any inquiry as to facts or law.

The CHAIRMAN. You may proceed.

Mr. EMERY. Mr. Chairman, when the committee adjourned, the proposition I was undertaking to advance for your attention had been interrupted by the always interesting colloquies with the Senator from New York. With your permission I should like to summarize what I was undertaking to show, first with regard to the legal features of this measure. I have analyzed what it undertakes to do and how it undertakes to do it. I stated that this bill in its terms and operating effects undertake to regulate local employment relations arising out of acts of production under the guise of regulating commerce. Such acts of production and the employment relations arising out of them are clearly reserved to the States under the tenth amendment and denied to the Congress.

In support of that proposition I submitted a large number of cases to the committee, and particularly directed your attention to the advisory opinion given by the present Chief Justice of the Supreme Court of the United States, in 1926, when he was appearing before the Federal Oil Conservation Board. The question before that Board being whether or not the Federal Government could control the production of oil entirely within a State, under any power which it possessed.

Mr. Hughes examined the commerce power, the general-welfare clause, and the alleged use of the preamble of the Constitution and called attention to the fact that none of these powers related themselves in any way to the giving to Congress of authority over the acts of or the circumstances of production. He said, in conclusion, referring to these questions.

> It is too elementary to require discussion and it is impossible to believe legal advisers of this Board would suggest it proceed on any different view.

In this connection I want to call to the attention of the committee that we are confronted legally with this situation. Not 1 Federal court but 20 Federal courts within the year have passed upon questions arising under the Recovery Act. I exclude the Agricultural Adjustment Act because that is a different and separate situation, and numerous decisions have related themselves to that—but under the Recovery Act 20 cases have been decided by the district court of the United States in all parts of the Union. They have been unanimous in holding that the alleged authority to control local acts of production or service is not within the commerce power. These cases are so clear that I desire to enumerate them in order that they may go into the record at this point for your information. The first

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case is that of *Purvis* v. *Bazemore*, United States District Court for the Southern District of Florida, December 2, 1933.

In this case the court held that a local industry engaged in the pressing, cleaning, and dyeing of clothes is not engaged in interstate commerce and Congress has no authority under the Constitution to regulate such a purely intrastate business. The suit was for an injunction to restrain violations of the maximum-hour provisions in the cleaning and dyeing code. The restraining order was denied.

The second case is that of *United States* v. *Suburban Motor Service Corporation*, United States District Court, Northern District of Illinois, February 10, 1934.

In this case the court held that a retail gasoline service station is not a common instrumentality of interstate commerce and the prohibition against giving premiums in the sale of petroleum products under the petroleum code is invalid as applied to a retailer operating in one State. The Government's application for an injunction was denied.

Then came the case of *Panama Refining Co.* v. *Ryan*, United States District Court, Eastern District of Texas, February 12, 1934. There the case reached the Supreme Court of the United States, involving two questions, one whether or not there had been an invalid delegation of power of Congress, and the second whether or not the control of oil production there provided for was within the commerce power.

The court decided the first question, and as the second was unnecessary it did not refer to it, the case being determined on the delegation of power, which the Supreme Court held to have been invalidly attempted by a vague and indefinite standard which provided no rule for the conduct of the Executive in the exercise of the alleged power.

The fourth case is that of *United States* v. *Bob Lieto*, United States District Court, Northern District of Texas, February 7, 1934, which goes on the same principle as the second case to which I called your attention above.

There the court ruled that the wages and hours of an employee of a local gasoline service station are not subject to Federal regulation under the interstate commerce clause and therefore such an employer cannot be prosecuted for failing to comply with the provisions of the Petroleum Code.

The fifth case was *Hart Coal Corporation* v. *Sparks*, United States District Court, for the Western District of Kentucky, May 19, 1934.

This was an action to restrain the United States attorney from prosecuting the plaintiff for violating the minimum-wage provisions of the Bituminous Coal Code. After citing the Supreme Court cases listed above the court granted a preliminary injunction. The court distinguished between the "stream of commerce" cases, such as *Stafford* v. *Wallace*, on the theory that those cases dealt with acts, instrumentalities and agencies directly connected with and affecting interstate commerce and in no way involve manufacture or production.

The next case was that of *Irma Hat Co.* v. *Retail Code Authority*, United States District Court, Northern District of Illinois, July 31, 1934.

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There the plaintiff was engaged in selling millinery at retail. It sought to restrain enforcement of the code provision requiring making of statistical reports and the use of the N. R. A. label. The court held that insofar as these provisions affected purely intrastate business they exceed the power of the Federal Government and are unconstitutional. The court further observed that "retail trade" is fully intrastate commerce and beyond the regulatory power of the Federal Government. A preliminary injunction was granted.

The seventh case is that of *United States* v. *Gearhart*, United States District Court of Colorado, August 8, 1934.

In this case the court ruled that the production and sale of coal within the borders of one State did not constitute interstate commerce merely because some of the purchasers came from other States to mine and purchase coal. The Government's application for a restraining order against violation of the minimum-price provisions of the Coal Code was denied.

The next case was that of *United States* v. *Eason Oil Co.*, United States District Court for the Western District of Oklahoma, September 22, 1934.

In this case a bill was filed to restrain the drilling of a new oil well in violation of regulations issued under the Petroleum Code. The court held that the production of oil or gas by the drilling of a well wholly within a State does not constitute an interference with or a burden upon interstate commerce and is therefore beyond the power of Congress. The restraining order was denied and the court held the regulations invalid under section 9 (c) of the N. I. R. A. and held further that even though these regulations were authorized by the act, the act itself would be clearly unconstitutional.

The next case is *United States* v. *Kinnebrew Motor Co.*, United States District Court for the Western District of Oklahoma, November 12, 1934, being a case under the Motor Vehicle Retail Code.

This case was decided on a demurrer to an indictment charging a violation of the Motor Vehicle Retail Code regarding trade-in allowances. The court held that the sale or purchase of a second-hand automobile between two persons in the same State does not constitute, affect, or burden interstate commerce and the Motor Vehicle Retail Code, attempting to regulate such a transaction, is unconstitutional. The sale of automobiles at retail, the court held, is not interstate commerce and Congress has not authority to regulate such transactions. The demurrer indictment was sustained.

The next case was that of *United States* v. *Sutherland*, United States District Court for the Western District of Missouri, December 27, 1934.

In this case the Government sought to restrain a retail lumber merchant from selling lumber below cost as prohibited in the retail lumber code. The court refused the injunction on the ground that the defendant's sales were not interstate commerce and not subject to the regulatory power of Congress as attempted in the N. I. R. A.

The next is the case of the *United States* v. *Rogles*, United States District Court for the Eastern District of Missouri, January 24, 1935.

The Government sought to restrain the defendant from selling coal at prices less than the lowest cost determined under the retail solid fuel code. The injunction was denied and the court held that when a commodity is brought to its destination it is no longer prop-

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erly in interstate commerce, and that even though the Recovery Act be construed to authorize price fixing such regulations could not be effective in sales of commodities that had ceased to be a part of commerce under which the National Government has control.

The next case is that of *Table Supply Stores, Inc.*, v. *Hawking*, United States District Court for the Southern District of Florida, January 23, 1935.

This action was for an injunction restraining the United States attorney from prosecuting a violation of the Recovery Act, as found by the Regional Compliance Board. Plaintiff was a local merchant. The court held that plaintiff's business was not subject to regulation by Congress and granted the injunction. The code violation alleged was that the plaintiff had failed to pay the minimum wages for overtime work as required in the code for the retail food and grocery trade.

The next was the case of *United Electric Coal Co.* v. *Rice*, United States District Court for the Eastern District of Illinois, December 21, 1934.

In this case the relationship between the Recovery Act and the power of Congress to regulate interstate commerce became important in the court's consideration of the Norris-LaGuardia Act. The action was for an injunction restraining certain labor unions from interfering with the operation of plaintiff's coal mines. Before plaintiff could show that it was entitled to an injunction it was necessary to establish that every reasonable effort had been made to settle the dispute by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration as required in the Norris-LaGuardia Act. To meet this requirement the company showed that the dispute had been submitted to the Bituminous Coal Labor Board established under the code for that industry. The court held that this proceeding did not satisfy the requirements of the act for the reason that the Bituminous Coal Labor Board "is wholly without power or jurisdiction to fix and declare legally enforceable rights between the plaintiff and its employees who are engaged in mining coal at the Freeburg Mine, which is an employment wholly intrastate in character."

Other cases along the same line are as follows:

United States v. *George*, United States District Court of Florida, involving the lumber code, hours, wages, and prices, an injunction being granted January 19, 1935.

United States v. *Superior Products, Inc.*, United States District Court of Idaho, February 9, 1935, involving retail prices under the Petroleum Code.

United States v. *Weirton Steel Co.*, United States District Court of Delaware; and also *Acme, Inc.* v. *United States*, District Court of New Jersey, March 13, 1935, involving fabricated metals.

I would like also to call to your attention a case decided last Friday by the United States Circuit Court of Appeals in Chicago, where an application was made for the review of an order of the National Labor Relations Board requiring representatives chosen for collective bargaining by a majority of employees in a manufacturing plant to be recognized as the exclusive agency to bargain in behalf of all employees.

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That, said the circuit court of appeals, is not a decision binding on the employer, because the Board has no power under the act to render such a decision. They, therefore, dismissed the appeal since there was no occasion to review an order was uttered by a board without binding force. That is the first decision of the circuit court of appeals on that subject.

I call these cases to your attention, gentlemen of the committee, because in every one of these cases a labor dispute arising in exactly the same relation of employment, or "unfair practice" to commerce as it is vaguely described in this act, would be put under the jurisdiction of the proposed board. In other words, the proposition is this: That in these cases 20 courts of the United States have declared they relate to wholly local acts of production, the Congress had no authority under the commerce clause to regulate them.

Under this bill, in these same cases, if they presented disputes or "unfair labor practices", as defined in this act, which might lead to, in the discretionary opinion of the Board, or might have a tendency to lead to a dispute that would lead to an interruption of commerce, or an obstruction of commerce, they would be held to be within the jurisdiction of the proposed board.

If all of the acts of production in these cases are not within the control of Congress under the commerce power, how can the employment relationship arising out of them be within the exercise of a power which the courts so clearly deny?

If there were one of two cases only it might well be said we will await a further decision of the Supreme Court of the United States; that is, if the Government of the United States will permit the Supreme Court to pass upon a case of its own choosing, in order to determine its authority in the premises; or, having reached the doors of the Supreme Court it will abandon the field rather than test its authority in a case of its own selection.

So much for the commerce power itself. I pass from that for the present.

Assuming for the moment the validity of the method of regulation prescribed in this bill the procedure provided denies due process of law by permitting amendment and enforcement of a complaint without notice to the defendant. It permits him to be deprived of valuable rights of liberty and property, and damages to be assessed against him by orders issued upon amended complaints of which he has had no notice, no opportunity to be heard, and upon which ultimate orders may be formulated upon declarations of which he has no knowledge. It is equally a denial of "due process" to authorize an administrative body, even though it were otherwise validly established, to take evidence without regard to establish rules of law and to undertake to make the findings of fact, founded upon such alleged evidence, conclusive upon a reviewing court.

I would not insult the intelligence of this committee by stating to it that it was necessary to cite any cases from any court of the United States to sustain the proposition that the most fundamental right of civil liberty in a free country is that a citizen accused of an offense or about to have a penalty inflicted upon him shall have due notice of the character of the offense with which he is charged, have

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his day in court, and to have due notice of the offense with which he is charged, and to have opportunity to meet that complaint.

In the bill this committee reported last year to the United States Senate it was expressly provided that wherever the complaint was amended the defendant would be given notice of the amended complaint and an opportunity to respond. Under section 10 of this bill, in subdivision (c), the Board or its agent—because there is no assurance that the complaint will ever be heard by the Board—may in their discretion not only issue the original complaint and serve it by telegram, but they may in their discretion, according to the language of this bill, amend the complaint at any time prior to the issuance of an order based thereon.

An order is never issued by an administrative body nor by a court until after the evidence has been heard. Then it proceeds to formulate its order in the light of what it has heard.

I know of no administrative body nor any court that ever permitted a complaint to be amended after the evidence was heard and before the order was issued. If such procedure as that could be authorized, a man could be tried without knowledge of the charge against him, convicted by a court in whose favor he did not stand, on a complaint which he had not heard, and which he had no opportunity to answer.

The present provision was put back in the bill after this committee had corrected the same difficulty in a preceding bill. Therefore, it may be said not to have been replaced by accident. It is the product of mature deliberation.

The procedure under the Federal Trade Commission Act, for example, is that whenever a bill of complaint is amended the party defendant is served with the amended bill and has the same opportunity to respond to the amended complaint as to the original complaint. That is the universal rule in all courts of the United States. I need do no more than call your attention to that proposition.

As I have already stated, it is equally a denial of due process to authorize an administrative body, even though it were otherwise validly established, to take evidence without regard to established rules of evidence, and to undertake to make findings of fact, however informally taken, binding upon the reviewing court.

The next proposition is intimately related to those two propositions, and I desire to call this particularly to your attention. This bill violates the fourth amendment, which guarantees against "unreasonable searchers and seizures" by the inquisitorial power which it grants to the Board, its members, and agents, to have access to books, records, and persons, in the absence of any judicial proceeding or any administrative proceeding which it may be authorized to conduct.

In the sixth section of the bill, particularly paragraph (b), it is stated that the Board shall have authority and is directed to study the activities of such boards and agencies "as have been or may be hereafter established by agreement, code, or law" to deal with labor disputes, and to receive from such boards reports of their activities.

Under section 13, for the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9, section 10, and section 12, the Board or its duly authorized agents or agencies have

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at all reasonable times access to for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question.

Precisely what? That is somewhat dubious—"evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question."

Under the bill reported by this committee to the Senate, the power of investigation was limited to the subject of complaint.

Section 13 then proceeds to give power to issue subpenas, require the production of books, records, documents, or witnesses pertaining to the matter before it. It is obvious from these powers of investigation that the Board is not to be created merely as a semijudicial body to decide and hear cases which may come before it on the complaint of a party who alleges he has been the subject of an "unfair labor practice." The Board possesses a roving commission to engage in the investigation of not only employers but of employee agreements, organizations, and operations of any agreement with their employer, and they may be required to make reports of their operations to this Board.

The Board may furthermore, on its own initiative, investigate actual and proposed agreements and the commission of "unfair labor practices."

I think if there is one question that has been settled in the field of administrative law, and which has attracted the attention not only of lawyers but particularly of the students of administrative law, it is that no administrative body, any more than an individual, is fit to be a judge, prosecutor, and jury in its own cause. It is not even fit to be a judge in its own case. The administrative body proposed in this bill by virtue of the investigatory authority and general inquisitorial powers vested in it would engage in the pursuit of offenses, it then draws a complaint, upon its own initiative, or may receive one. It then tries the case, finds facts without the restricting control of the rules of law, and the findings of fact are binding upon the court which reviews its proceeding.

It may not only issue cease-and-desist orders, it may require what is described as "restitution", and take such further affirmative action as it thinks necessary. This last vague and general grant of authority, I assume, means it may direct such redress for the injury which has been done to the complainant as seems to it just in the premises.

Further than that, under section 11 of this bill, which is entirely new, the Board is under no necessity to hear any complaint. It is said to be an administrative body similar to the Federal Trade Commission, or any one of the other administrative bodies created by law, but it may apply through the various United States district attorneys for the issuance of a restraining order or injunction to any district court of the United States and request the prohibition of what it asserts to be an unfair labor practice

In other words, it may not only hear cases, but as the results of its authorized investigations, without giving any hearing to the subject of the complaint, it may apply to the district attorneys of the United States for enforcement of its orders and undertake the permanent control, direction, and supervision of employment relations through-

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out the United States through government by injunction, which has been so severely denounced by proponents in every other field of employment relations.

Furthermore, the Board may obtain such injunctions under conditions which are denied to employers or the Government by the Norris-LaGuardia Injunction Act.

I have said the bill violates the fourth amendment, and I have developed the character of inquisitorial power it may have in order that you may understand it. You will perceive it comes squarely within the condemnation of the case of *American Tobacco Co.* v. *The Federal Trade Commission* in 263 U. S. 141, wherein Mr. Justice Holmes aptly characterized the conduct of the Trade Commission as engaging in a "fishing expedition" for the purpose of determining whether or not they could turn up some alleged violation of law.

This bill creates a pooh-bah of Federal administrative and executive authority. The Board joins to its power as a detective, as a prosecutor, its functions of a grand jury and a judge, adding to all of that the crowning authority to act as an election judge in the determination of who represents the majority of the employees for the purpose of collective bargaining.

If that is not a violation of the fourth amendment in the general, vague, indefinite, discretionary, but extensive grant of inquisitorial authority, I have never seen it.

The bill violates the seventh amendment of the Constitution by the provisions of section 10, paragraph (c), which undertakes to authorize an executive body to assess damages and require restitution, and to make its findings of fact in such regard conclusive on the courts of review. This presents a matter of very serious importance.

The seventh amendment to the Constitution reads in part as follows:

> In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved * * *.

The meaning of this language was defined in a very early decision by the Supreme Court in which Mr. Justice Story wrote the opinion of the court (*Parsons* v. *Bedford*, 3 Peters 433, 7 L. ed. 732). The Court said, at pages 446 and 447, that:

> The phrase "common law", found in this clause, is used in contradistinction to equity and admiralty and maritime jurisprudence. The Constitution had declared in the third article, "that the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority", etc., and to all cases of admiralty and maritime jurisdiction. * * * By common law they meant what the Constitution denominated in the third article "law"; not merely suits, which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized and equitable remedies were administered; or where, as in the admiralty, a mixture of public law and of maritime law and equity was often found in the same suit.

This constitutional requirement of trial by jury would appear to be overlooked in section 10 (d) of the Wagner bill. This section provides that if the board shall find that any person has engaged in any unfair labor practice, then the Board shall state the findings of fact and "shall issue and cause to be served on such person an

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order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including restitution, as will effectuate the policies of this act." It appears that the orders of the Board could require an employer to make restitution through the payment of back wages, wages lost through unlawful discharge, through refusal to reinstate a discharged employee, or other damages to employees growing out of an unfair labor practice committed by the employer.

In that connection I want to call attention to the possible source of this interesting suggestion. There appeared in the New York Times recently an account of a Mexican labor board under the Mexican Constitution which has required the restoration to employment of the striking employees of Huetactra Oil Co. at Tampico, Mexico, and ordered the repayment to the strikers of $75,000 of wages which they lost by their strike.

Such money damages would be assessed against an employer by the proposed Wagner board without the intervention of a jury.

Section 10 (f) of the bill provides for the enforcement of any order of the board by any circuit court of appeals and the findings of the board as to the facts, if supported by evidence, are made conclusive. Similarly by section 10 (g) any person aggrieved by an order of the board may obtain review of such order in any circuit court of appeals in which, of course, there is no jury.

Reparation orders of the Interstate Commerce Commission present the closest analogy to the restitution orders which the National Labor Relations Board would be authorized to issue under section 10 (d). Section 8 of the Interstate Commerce Act as amended (title 49, U. S. C., sec. 8) provides that any common carrier—

shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any violation of the provisions of this act.

Section 9 provides that any person claiming to be damaged by any common carrier may either make complaint to the Commission or bring suit for the recovery of such damages in any district court of the United States. Section 16 provides for the award of damages by the Interstate Commerce Commission and the manner of proceeding therein provided present a striking contrast to the method authorized in section 10 of the Wagner bill. Section 16 reads in substance as follows: If the Commission determines that any party is entitled to an award of damages it shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named, just as an order of the labor board in this case would. If the carrier refuses to comply with such an order any person for whose benefit the order was made may file in the Circuit Court of the United States for the district in which he resides or in any State court of general jurisdiction, a petition setting forth the causes for which he claims damages, together with the order of the Commission. Any such suit shall—

proceed in all respects like other civil suits for damages, except that on the trial of such suits the findings and order of the Commission shall be prima facie evidence of the facts therein stated.

In connection with this comparison under the Interstate Commerce Act, where the alleged act of a carrier has caused damage to the shipper, the shipper may apply to the Commission and present

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his facts. If the Commission finds there has been a violation of the Interstate Commerce Act, the finding of the Commission is not conclusive upon any court, but it establishes a prima facie finding of fact with which the aggrieved party then goes to court in order to collect his damages.

Anyone, of course, will agree that a prima facie finding is a rebuttable presumption that may be overcome by the character of evidence which is presented by the carrier in its defense.

In all cases, therefore, where the Interstate Commerce Commission is authorized to order a payment of damages to any private party, the award is ultimately submittable to a jury in compliance with the seventh amendment, and these reparation orders of the Commission are the type which must be submitted to a jury during a trial de novo. In one case involving a reparation order it was argued that the right to a jury trial was infringed by that provision in section 16 which made the order of the Commission "prima facie" evidence in any civil suit brought by the shipper against the carrier for damages. In *Meeker* v. *Lehigh Valley Railroad Co.* (236 U. S. 413) the Court said that section 16 merely established a rebuttable presumption; at page 430 the Court said:

> It cuts off no defense, interposes no obstacle to a full contestation of all the issues, and takes no question of fact from either court or jury. It does not abridge the right of trial by jury or take away any of its incidence.

What this bill that is before you does is to authorize its proposed administrative body to require restitution, the payment of damages, or such affirmative action as may be required, and its finding of fact is conclusive upon the circuit court of appeals that reviews the case, because there is no jury in that court.

In a more recent case, *Baltimore & Ohio Railroad Co.* v. *Brady* (288 U. S. 448), the Court said at page 458, in discussing section 16 of the Interstate Commerce Act:

> Undoubtedly it was to the end that they be not denied the right of trial by jury that Congress saved their right to be heard in court upon the merits of claims asserted against them.

In this bill they do not "save" the right, they destroy it. They turn over to an administrative body authority that can only rest in a court of the United States accompanied by a jury.

Proceedings almost identical with those arising under section 16 of the Interstate Commerce Act are provided in sections 308, 309 of the Packers and Stockyards Act of August 15, 1921 (7 U. S. C. 181). Here also any order of the Secretary of Agriculture awarding damages may serve as the basis of a civil suit in any Federal district court or State court having general jurisdiction, and such suits shall proceed in all respects like other civil suits and damages except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated.

The different procedure provided in section 10 (e) and (f) of the Wagner bill presents a fundamental departure from existing administrative practice and in effect does violate the requirement of jury trial in suits at common law involving $20 or more. The orders of the Labor Board would be reviewable only on questions of law by any United States circuit court of appeals. These courts are appellate tribunals and do not afford jury trials. Consequently, so far

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as any order of the Labor Board is involved, in which the employer is required to make restitution in the form of wages or damages, these proceedings impair the right of a jury trial granted by the seventh amendment.

This bill further violates the judiciary section—that is, article III, section 1, of the Constitution—in that it undertakes to give an executive or administrative body judicial authority in passing final judgment on questions involving matters of civil rights, rights of persons and property, and makes the same enforceable through proceedings in equity in districts of the United States.

While it is true that the facts found by the agencies to which I refer may be conclusive, the functions of these agencies are quite different from those to be performed by the Labor Board and the practice followed by these agencies afford no standard by which to test the validity of the provision in the Wagner bill which makes the Labor Board's findings of fact conclusive. The activities of the Federal Trade Commission, the Interstate Commerce Commission, and the Secretary of Agriculture involve the enforcement of " public rights " which in their nature do not require judicial determination.

While the restitution orders of the Labor Board violate the seventh amendment, if cease and desist orders violate the Constitution in the respects I have referred to, for these cease and desist orders are fundamentally different from the cease and desist orders of the Federal Trade Commission, or the Interstate Commerce Commission, or under the Packers and Stockyards Act. The fatal error here is the failure to distinguish the difference between the kind of cases dealt with by this bill and those dealt with by existing administrative boards and commissions.

While it is true that the facts found by these agencies may be conclusive, the functions of these agencies are quite different from those to be performed by the Labor Board. The practice followed by these agencies afford no standard by which to test the validity of the provision in the Wagner bill which makes the Labor Board's findings of fact conclusive. The activities of the Federal Trade Commission, the Interstate Commerce Commission, and the Secretary of Agriculture involve the enforcement of " public rights " which in their nature do not require judicial determination. They do not undertake to determine the nature of the contract between private parties, whether or not the one has caused injury or damage to another by reason of which he is required to make restitution or redress in civil damages.

The proposed Labor Board, however, would be authorized to decide private rights; that is, the liability of employers to their employees. This distinction between proceedings involving " public rights " and those in which " private rights " are determined was clearly stated by Mr. Chief Justice Hughes in the case of *Crowell* v. *Benson* (285 U. S. 22, 50) :

> As to determinations of fact, the distinction is at once apparent between cases of private right and those which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments. * * * Familiar illustrations of administrative agencies created for the determination of such matters are found in connection with the exercise of the congressional power as to interstate and foreign commerce, taxation, immigration, the public lands, public health, the facilities of the post office, pensions, and payments to veterans.

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In the above case the court was considering the validity of the Longshoremens' and Harbor Workers' Compensation Act in which the findings of fact by administrative officers were made conclusive. The court held in effect that if this law purported to make conclusive all facts found by the administrative agency the law would be invalid as an invasion of the judicial power conferred in article 3, section 1, thus indicating even in the case of admiralty jurisdiction, where the constitutional limitations on the power of Congress are less restrictive, that the Federal courts cannot be ousted of jurisdiction to review facts found by administrative officers. In this connection the following language of the courts sets the limit to the power of Congress to delegate to administrative officers the authority to make findings of fact which the courts cannot review. (*Murray* v. *Hoboken Land & Improvement Co.* (18 Howard, 272, 284), through Mr. Justice Curtis):

> * * * we think it proper to state that we do not consider Congress can either withdraw from judicial cognizance any material which, from its nature, is the subject of a suit at the common law, or in equity, or in admiralty; nor on the other hand, can it bring under the judicial power a matter, which, from its nature, is not a subject for judicial determination.

This limitation is discussed at greater length in the case of *Crowell* v. *Benson*, supra, wherein the court declared:

> In relation to these basic facts, the question is not the ordinary one as to the propriety of provision for administrative determinations. Nor have we simply the question of due process in relation to notice and hearing. It is rather a question of the appropriate maintenance of the Federal judicial power in requiring the observance of constitutional restrictions. It is the question whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency—in this instance, a single deputy commissioner—for the final determination of the existence of facts upon which the enforcement of the constitutional rights of the citizen depend. The recognition of the utility and convenience of administrative agencies for the investigation and finding of facts within their proper province, and the support of their authorized action, does not require the conclusion that there is no limitation of their use, and that the Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the executive department. That would be to sap the judicial power as it exists under the Federal Constitution, and to establish a government of a bureaucratic character alien to our system, wherever fundamental rights depend, as not infrequently they do depend, upon the facts, and finality as to facts becomes in effect finality in law.

In this case the statute was sustained only because the court construed it to permit a trial de novo on the facts. The Wagner bill, however, will not admit of such construction. By limiting review in the courts to the record before the board, and by giving finality to findings of fact supported by any evidence, the bill violates article III, section 1, of the Constitution.

The essential function of the Labor Board to be established by this bill is the determination of legal rights of employers and employees. If it did not do that it would be a useless legislative proposal.

It is intended to determine by this board whether or not there has been a violation of a fundamental right of an employee by an employer, whether or not the contract between them is a contract that can be set aside because it was obtained under duress, whether or not the employer has interfered with the employee in the exercise

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of the right of association. These are fundamental civil rights of liberty and of property and of contract. The right to hear and determine them is among the most fundamental which the judicial system of the United States was established to interpret and enforce.

To turn that power over to an administrative body and to give its conclusions the finality of fact as proposed in here, is an arbitrary deprivation of one of the most fundamental rights that our civil society was organized to guarantee, sustain, and perpetuate.

I state this function is inherently judicial. In deciding the case of *Great Northern Railroad Co.* v. *Merchants Elevator Co.* (259 U. S. 285), the Supreme Court, speaking through Mr. Justice Brandeis, said:

> To determine whether a shipper has in the past been wronged by the exaction of an unreasonable and discriminatory rate is a judicial function.

What is attempted here is exactly the same thing. This board is authorized under this bill to determine whether or not a man has been wronged by the past act of an employer.

In the case of the proposed Labor Board, the power to determine whether an employee has in the past been wronged by an unfair labor practice of his employer would likewise be a judicial function. In contrast to this power of an administrative body to determine private rights, the functions of the Federal Trade Commission are significant. In the case of *Federal Trade Commission* v. *Kleisner* (280 U. S. 19) the Court said, speaking again through Mr. Justice Brandeis, that—

> Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrongs. * * * A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute before the Commission a complaint against the alleged wrongdoer.

Now, you see, gentlemen, the clear and substantial difference between what the Federal Trade Commission undertakes to do and what this board under this bill would undertake to do. This board would undertake to determine violations of private right between two persons, the employer and the employee, to right a wrong, if one has been done, and to require restitution or even the payment of damages; while on the other hand the Federal Trade Commission secures no redress for injury done, interprets and enforces no private right, indeed may not do so, but in the public interest prohibits an unfair method of competition.

If a man alleges an unfair method of competition as carried on by a competitor, he files a complaint with the Federal Trade Commission. If the Commission determines itself, in the public interest, to pursue it, the Commission brings action in its own name, not in the name of the aggrieved party. After trial it may issue a cease and desist order if the facts sustain it, prohibiting the doing in interstate commerce of the unfair method of competition which has been proved.

However, the complaining party has no redress through the Federal Trade Commission. The Federal Trade Commission is enforcing its order against the practice of a "public" not a "private" wrong. Whereas, under the provisions of this bill the Labor Board

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is undertaking to pursue a private wrong on a complaint instituted by private parties before an administrative body without judicial authority. The Board would undertake to determine the respective contractual rights of the parties, whether or not a tort or a wrong has been committed by the employer against the employee, and to redress the private wrong by requiring restitution, or requiring the payment of damages, or such other affirmative action as it determines is necessary. In doing so the Board would conclusively determine facts which are binding upon the courts of review, if sustained by the evidence.

It thus deprives the aggrieved party of his right under the Constitution to a jury trial in matters involving more than $20 and deprives him of the application of judicial power to the allegation that a wrong has been done.

Distinctly different from these cases to be given the Labor Board are those presented to the Federal Trade Commission, so also the cases involved the Interstate Commerce Commissionand the Packers and Stockyards Act. In every one of these you are enforcing a "public" right and redressing a "public" wrong through an administrative body. If a private individual suffers damages, you have only a determination of the fact that is prima facie evidence of the commission of such injury, rebuttable in a trial. In such cases the party aggrieved has the right to sue in a court of the United States, and the findings of fact by an administrative body is merely prima facie evidence of its commission. The aggrieved party must go into a court of the United States and demonstrate his injury before the court of which a jury is a part.

Now that, Mr. Chairman, goes to the fundamental questions of law involved in this bill.

More than that, I venture to direct the committee's attention for a moment to the nature of the rights which are here involved. They are among the most fundamental rights that man possesses, whether laborer or employer, and whether individually or collectively exercised. Our whole structure of Government rests upon the fundamental proposition that it is intended at once to promote and protect the right of life, liberty, and happiness. It has been construed to be at once a right of liberty and a right of property when a man disposes of his labor as he will, to whom he will.

The further right of a man to make a contract to enter into engagements for the sale of his labor or for the sale of his goods or for the sale of his talent or for the sale of his services in any way he pleases, is at once a right liberty and a right of property.

Freedom of contract is the rule; restraint the exception. The imposition of restraint is justified only in the public interest, so we do restrain some kinds of contracts that may be contrary to the public interest in many particulars. But the right of the individual to make his own contract is just as great as the right of men to associate with others collectively to make a group contract.

One thing this bill ignores, to which I beg to call your express attention, in its declaration of policy is the principle so well stated in the Norris-LaGuardia declaration of policy, and that is that the right of association includes the right "to decline to associate with others."

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The right to decline to associate with others is one of the most valuable rights that man possesses. He is free to associate with others as he sees it, but to refrain from doing so if he does not think his interest is advanced by so doing. That is a right of liberty, a right of property. So, too, is the right to select one's agent, which is a right of property as well as a right of liberty.

Of course, the fundamental propositions of law I have expressed to you are simple textbook law. In the case of *Adair* v. *United States* (206 U. S.), in the case of *Coppage* v. *Kansas* (236 U. S.), and in the case of *Texas & New Orleans Railroad Co.* v. *Railway Clerks* (281 U. S.), and long prior to that, even, in the *Slaughter House cases* (83 U. S.), and in the whole field of early American law, no principle is more thoroughly established than the right of men to be free in making contracts as they desire, and especially to be free from interference in the making of them. The word "interference" in the development of our law is particularly illustrated in your great State, Mr. Chairman, in relation to the third person interfering between two parties who endeavor to make a contract. That sound principle is back of the making of and keeping any contract.

Among the first injunctions issued to prevent a breach of contract by a third person is in the case of *L. & N. Railroad* v. *Bitterman* (206 U. S.), where scalpers were enjoined from undertaking to approach passengers who had bought special limited excursion tickets sold under a provision that they would not be disposed of to others and good for a limited time. The practice of purchasing the return portion of those tickets by ticket scalpers was enjoined, and that injunction was sustained in the Supreme Court of the United States. It represents one of the foremost illustrations of the protection against the breach of contract by third parties.

You cannot have to which you have listened to testimony for the past week, without realizing that we are passing through a period in which the relations of employer and employee are being made the subject of experiment upon a very wide scale by the parties themselves. What this bill proposes to do, Mr. Chairman, is not to undertake to enlarge the liberties of the parties in accordance with its declaration of policy, but to contract them. As one examines the terms of the bill in comparison with the declaration of policy, he must be struck with the complete contradiction between it and the effect of the operating provisions of the bill upon the parties whose liberty it is alleged to extend.

Let me say in passing, Mr. Chairman, because I believe it was remarked the other day by a distinguished authority that no act of Congress had ever been set aside in which Congress declared the policy in the preamble of the bill, that there was the well-known instance of the Minimum Wage Act for the District of Columbia before the Supreme Court of the United States, in which the declaration of policy proceeds in the act itself to declare that these wages are necessary to protect the health and morality of minor persons and of women.

There was also the *Rental Cases* where an emergency policy was recited in the first case. In the second case attention was called to the fact that the declaration of policy, even from so distinguished a source as the Congress of the United States, is not conclusive upon

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the facts. Mr. Justice Holmes, in deciding the case of *Chastleton Corporation* v. *Sinclair* (264 U. S. 547), that being the second case, said:

> We repeat what was stated in *Block* v. *Hirsh* (256 U. S. 135, 154, 65 L. ec. 865, 870, 16 A. L. R. 165, 41 Sup. Ct. Rep. 458), as to the respect due to a declaration of this kind by the legislature so far as it relates to present facts. But, even as to them, a court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared (256 U. S. 154). *Chas. Wolff Packing Co.* v. *Court of Industrial Relations*, (262 U. S. 522, 67 D. ed. 1103, 1108, 27 A. L. R. 1280, 43 Sup. Ct. Rep. 630). And still more obviously, so far as this declaration looks to the future, it can be no more than prophesy, and is liable to be controlled by events. A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed.

This bill discloses in the declaration of policy that its purpose to protect the exercise by the worker of—

> full freedom of association, self-organization, and designation of representatives of his choosing for the purpose of negotiating terms and conditions of his employment or other mutual aid and protection.

How can it be described as conferring upon the worker full freedom of association, when by its very terms it contracts his freedom of association in at least two major particulars?

First, we find that he is confined to a majority through which he must select his representatives to bargain for him. I submit to this committee that a minority organization is no less an organization than a majority organization, therefore his liberty in the selection of his representative is contracted by the fact he must be a member of the majority, where previously it was not necessary that he should be, under any existing law.

Furthermore, there is the closed-shop provision for a contract with an organization within the company, or outside of the present relations with the company, which may be entered into, by an agreement with an employer, if it is the wish of 51 percent of the employees. That compels the minority to accept as a condition of employment membership in the organization with which the contract is made.

Is that an expansion or a contraction of the liberty of the individual? Obviously, it is a contraction.

Not only is it a contraction, but as the majority becomes his exclusive bargaining agency, it then becomes true that the individual has his own rights of contract limited by the terms of the law which it is proposed to enact to the submission of grievances and complaints. As long as he is a member of a voluntary organization by withdrawing from it he may detach himself from the leadership or representation, if unsatisfactory, but the moment he becomes a part of any minority group in the plant of his employment, he has but one remedy, and that is to abandon his employment. He has no freedom of self-organization, which is the very security to which he is entitled; he has no freedom of contract, if he cannot contract except in the sale of his labor through an agent whom he did not select.

Abraham Lincoln said, "No man is good enough to govern another man without his consent." It has been accepted hitherto as a fixed principle of law, that no man was good enough to be another man's agent in the field of contractual relations unless he chose or accepted him for that purpose.

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Now, I want to take up one or two fundamental thoughts underlying this principle, this idea that collective bargaining stands in a situation peculiar to itself.

The right of an individual to determine whether he shall deal with others individually or in association with others is a fundamental right. I call to your attention that it has been recognized and asserted in the declaration of policy at the foundation of the Norris-LaGuardia injunction bill.

Mr. Chairman, all rights of contract, and all rights to bargain by the very nature of the term mean the power to negotiate. They do not mean the power to compel another to accept the results of the negotiation.

As Mr. Justice Brandeis well said, "the endeavor to please a customer does not mean that you accept his terms." The right to enter into an engagement with another in the field of labor is a reciprocal and mutual, not an exclusive, agreement. If we carry it into any of the other general relations of life we must immediately recognize that the right to sell goods does not mean the right to compel anybody to buy them. If that were so, a man who enters into business is assured of success in advance. He could compel his customers to recognize their duty to purchase.

Does the right to lend create in anybody the duty to borrow?

Does the right to rent on the part of a landlord excite in any person the duty to accept the tenancy which is offered to him?

Does the right to marry include the right to pursue the lady of your choice and exclude competition, to compel her to accept your suit without regard to the competition of others? I have never heard of it, Mr. Chairman, but I do recognize that such belief has caused some of the most serious scandals that at present dress themselves on the front pages of the daily press.

Never before has anyone in this field suggested that the right to engage in contractural relations placed on somebody else, without a mutual right to reject the contract, the duty of agreeing to it.

I think of no more powerful evidence of the bias of the National Labor Relations Board could be offered by a strange critic than its suggestion that we should make it a matter of law in the United States that a man should be compelled under penalty to enter into collective contracts with another.

Now, Mr. Chairman, I want to ask if you will permit me to put into the record the opinion of the Court in the case of the *United States* v. *Weirton Steel Co.*, a case which has been the subject of very frequent reference in the course of proponents' hearings. The decision is not long. It is very remarkable in this, that it is the first time that a United States' court has examined at length a collective representation plan including more than 12,000 men, involving the right of the men to engage in collective bargaining, involving the claim of a union that its members had been interfered with and restricted in the exercise of their liberty as the representatives of a group.

There were 283 witnesses examined under oath in this case, 5 weeks of trial, followed by 4 days of argument by distinguished counsel representing the Government and the defendant. The court's finding of fact is an illuminating illustration of the contribution which

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the employee representation plan has made to the development of employment relations in the United States.

Now, Mr. Chairman, I want to call the fundamental principles to which I alluded to the mind of this committee as they were stated by Mr. Justice Bradley, many, many years ago in the *Slaughter House cases* (83 U. S.). He talked about these fundamental rights of the citizen and said:

> For the preservation, exercise, and enjoyment of these rights the individual citizen, as a necessity, must be left to adopt such calling, profession, or trade as may seem to him most conducive to that end. Without this right he can not be a freeman. This right to choose one's calling is an essential part of that liberty which it is the object of Government to protect; and a calling, when chosen, is a man's property and right. Liberty and property are not protected where these rights are arbitrarily assailed.

Then I wish to add to that the following statement from Blackstone:

> Civil liberty, the great end of all human society and government, is that state in which each individual has the power to pursue his own happiness according to his own views of his interest, and the dictates of his conscience, unrestrained, except by equal, and just and impartial laws.

I want, on behalf of all whom I have had the honor to represent here, to especially thank you and the members of the committee for your patience, and your indulgence and your very kind consideration in this long hearing on these serious questions which go to the very fundamentals of freedom, which Carlisle calls "the great universal question of the world", the rights and duties of men in the employment relation.

I should do an injustice to those whom I represent if I did not set forth their desire to recognize the right of employees as they expect to secure the recognition of their own rights. I am not here to antagonize employer and employees. We seek no sword; we seek peace.

No men are more interested in the preservation of the industrial peace than the employers of the United States. They recognize that without good will, justice, and reciprocal sympathy between employer and employee, there is ceaseless friction that destroys the relations of employer and employee. This bill, Mr. Chairman, stimulates that friction.

For 10 days you have listened to testimony of employers and employees from all parts of the United States in all forms of business. They have clearly vindicated the conclusion of the distinguished publicist, Mr. Walter Lippman, that the pending Wagner proposal "is a bad bill." Analysis and experience demonstrate it to be bad law and worse policy. To sum up: Under the pretense of regulating commerce, it seizes control of production on the thin theory that every labor dispute within a factory or store imperils the commerce of the Nation. It creates offenses unknown to the law through definitions so vague that the natural intercourse between employer and employee may be transformed into a crime. No man can determine in advance when the most innocent communications may not be converted into "interference" or "restraint" or "domination." The refusal to bargain collectively with an irresponsible, a communistic, or a racketeering organization is by definition as illegal as the refusal of relations with a labor organization of reputation and integrity.

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It is an ancient axiom that no man may be judge in his own cause nor play the part of both accuser and judge, or play the part of counsel, judge, and jury. The Labor Board created under this bill may summon anyone from anywhere in the United States or its possessions by telegraph on a 3 days' notice, through its own initiative or upon the complaint of an individual. Such power has never been given or suggested for any court of the United States at any period of its history. It is proposed that the Board shall enjoy a roving commission to engage in what Mr. Justice Holmes aptly described as "fishing expeditions", whether or not they related to any proceeding before it. Thus the whole field of employment relations is to be kept under continuous administrative scrutiny through a perambulating body dedicated to the reception of complaints. It is at once an omnipresent investigator, an omniscient prosecutor, and an omnipotent judge. The inferior and appellate courts of the United States are the servants of its orders and decrees. They are to compel obedience to its inquisitors and universally enforce its decrees.

The CHAIRMAN. Mr. Emery, may we interrupt you at this point?

Mr. EMERY. Certainly.

The CHAIRMAN. We are now compelled to take a recess until 2 o'clock.

(Thereupon, at 12:20 p. m., a recess was taken until 2 o'clock this day, Apr. 2, 1935.)

AFTER RECESS

The committee convened at 2 p. m., pursuant to the taking of a recess at noon.

The CHAIRMAN. All right, Mr Emery; you may proceed.

STATEMENT OF JAMES A. EMERY, REPRESENTING THE NATIONAL MANUFACTURERS ASSOCIATION AND OTHERS—Resumed

Mr. EMERY. Continuing, Mr. Chairman, I had in summarizing on the features of this measure called attention that proponents of the bill continually assert its protective features are essential to prevent coercion by the employer. Yet they continue to ignore the coercion of fellow employees or other organizations. They are silent in the face of every suggestion that the only test of good intentions and fair play is to accept the suggestion of the President and "prohibit intimidation, restraint, or coercion from any source." Yet the proponents of this measure, despite continuous lip service to that principle, stubbornly refuse to write it into the measure.

For 30 years Congress, of which you are distinguished Members, has refused to permit two groups of public employees in the District of Columbia subject to its control, to become or remain members of a labor organization, and they make that a condition of their employment. It is now proposed to except Congress from the operation of its own principles.

If Congress, like the Senate of 1920, were determined to control unfair labor practices in the public interest, it is presented with a remarkable opportunity. Within the limits of its authority it could control combinations of either employers or employees. It could guard the public against the use of power by labor unions as it pro-

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tects them against corporations. For experience demonstrates that, however power is developed, it needs control. And all combinations should look alike to the law. There is no place in our society for power without corresponding responsibility for its exercise. Neither employer nor employee should receive dominant consideration, but the public interest, which each may threaten by strike or lockout, should be the object to be protected.

Great Britain did it, with practical success and public approval. We, too, might do so, if Congress were equally determined that neither corporate nor labor combinations should individually or collusively—and that is an important word—threaten the public interest in uninterrupted commerce by arbitrarily and coercively not only refusing to engage in such commerce but preventing others from doing so until at least the cause of such threatened interruption had been investigated by an impartial body and public opinion offered an opportunity to become informed by an ascertainment of facts.

There is an ample field for the limitation of industrial warfare if Congress will approach it with impartiality and courage, but the pending bill would merely contract the liberty of employer and an employee, which it plausibly pretends to enlarge. It would multiply complaints and disputes and awkwardly thrust the Federal finger into the delicate field of local employment relations to the injury of both the public and the party.

I could not but think in listening to the discussion this morning, Mr. Chairman, as to just exactly how this bill, for example, would operate in a situation that was testified to in your presence this morning, where you have employees coerced because they have been the victims of fellow employees. It makes little difference whether it happens to be an attack by union men or an attack by nonunion men, would this measure have supplied a remedy in either case? It would not. It pays no attention to the coercion of employees.

The CHAIRMAN. This case this morning was an attack by nonunion men upon union men.

Mr. EMERY. It was so testified this morning.

The CHAIRMAN. It was testified to by a representative of a union organization.

Mr. EMERY. It makes no difference who made the attack, nor what form the attack took, the coercion remains and the employee is unprotected. The rights which are to be protected have been continuously and notoriously violated by groups of employees, as the records spread upon the courts of the country, page after page, year after year, tell a part of our unhappy history, clutter up police records of many cities. Yet the remedy, we are told, as far as it has been applied, is only by police intervention. Possibly that is so.

But I want to call to your attention, if I may, in closing, that the rights which Congress seeks to protect, self-organization without interference, when defined within its proper jurisdiction, the courts of equity have demonstrated their capacity to effectively protect without the intervention of any administrative body.

In the case of *Texas & New Orleans* v. *Railway Clerks* (281 U. S. —), you had a case involving the enforcement of the Railroad Labor Act of 1927. There the Congress, without providing a remedy, had declared for protection of the right of self-organization. It had placed the obligation upon both the employer and the employee to

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use every reasonable means of arriving at a settlement of their disputes without interruption of commerce between the States by rail. This right of organization, although no penalty for its violation, was provided in the act, and no remedy was asserted, was interferred with by a railroad company, which undertook to establish or promote or support an association of employees and to prevent self-organization. The aggrieved organization, a union, went to a district court of the United States and obtained an injunction, and the company was restrained from interfering with its exercise of the right of organization. That injunction was disobeyed. The railroad company was cited for contempt. And it was punished for contempt. And under an affirmative injunction was required to restore the status quo ante which it had destroyed.

The remedy was effectively applied, and on review the Supreme Court insisted that Congress had not given a naked right. That its purpose was plainly to prevent an interruption of an instrumentality of interstate commerce by strikes. The Supreme Court was told by counsel for the brotherhood, who happens to be the distinguished head of the National Recovery Administration, Mr. Richberg, who pleaded in the Supreme Court of the United States that section 10 of the Railway Labor Act "was intended to limit the right to strike", which, of course, under Senator Wagner's bill may not be interfered with or impeded. But in the Railroad Labor Act of 1927 it was distinctly interfered with and impeded for the purpose of compelling the parties who threatened to strike to maintain the status quo until an investigating committee, appointed by the President of the United States, could determine the facts, inform the public, and rely upon the development of informed public opinion to provide a sanction. It was a compulsory investigation as opposed to compulsory arbitration.

The Supreme Court, in sustaining the power of Congress to regulate these relations in the case of a carrier exclusively engaged in interstate commerce, to which jurisdiction there should be no question raised, declared not only that the rights involved were enforceable but that the right to select their own agents and to be represented by them was "a property right", and predicated that expression of property right upon the previous decision of the Supreme Court in the case of *Coppage* v. *Kansas* (236 U. S.). So there you were presented with a field in which Congress had undertaken to exert its authority and enforced through the flexible use of judicial power in equity rights that are exerted within the field of interstate commerce properly defined. They can be protected without raising the serious and numerous questions raised by the proposal pending before this committee, which, of course, is equally applicable to many other unfair practices to which the people of the United States often direct your attention.

Take, for example, one of the most notorious practices we have, the question of jurisdictional strikes. For example, we have a building here in the city of Washington on which construction has been stopped for some weeks now because nine men cannot determine who shall operate an elevator. There are 250 men out of work. Thousands of dollars of wages are being lost. Then observe the delicacy with which any public or private officer, or any public

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board, approaches the matter of dealing with the situation because of the fact that it is a conflict between two unions.

Senator WAGNER. Pardon me. You wanted to finish before any questions?

Mr. EMERY. I was just going to say one thing more in conclusion. If by a proper exercise of authority, unfair practices, assuming they could be directly and substantially connected to interstate commerce, the calling of a jurisdictional strike could be prohibited until the parties at interest and submitted the question to the highest national officer, whoever it might be, for the determination of the case, in order that the innocent victims might not suffer the penalty inflicted on them when the parties resort to rough-and-tumble tactics.

Numerous cases of employer coercion have been called to your attention. Of course, none of those lie in the minds of the proponents of this measure except the use of the power here directed for aggressive organization.

So, Mr. Chairman, I am there concluded.

The CHAIRMAN. We appreciate your patience in waiting so long to be heard, and your whole argument may be placed in the record in one place, so there will be no interruption by the dates.

Senator Wagner desires to ask you some questions.

Senator WAGNER. Yes; I am not going to survey this whole field again, so I am only going to ask you two or three questions, but I think there is something you said this morning that I am very sure, Mr. Emery, you did not intend to say. You spoke of section 6, I think it is, subdivision (b), which reads that:

> The Board shall have authority and is directed to study the activities of the boards and agencies as have been or may be hereafter established by agreement, code, or law, to deal with labor disputes, and to receive from such boards reports of their activities.

Then you stated to the committee that under section 13 this Board is empowered to investigate the activities of any of these boards, or even the agreement. I remember your emphasizing that, with the power to subpena witnesses, to examine all other records, to inquire into every phase of their activities. And if you read section 13, Mr. Emery, you will find that the investigation power conferred upon the Board is limited to section 9, which deals with unfair labor practices; section 10, which deals with elections; and section 12, which deals with arbitrations; I mean there is that limitation. So that it could not apply to subdivision (b) of section 6.

Mr. EMERY. Senator, if you will turn to 11, I think you will find that the area of investigation is quite large enough to support the statement that I made. "For the purpose of all hearings and investigations." What investigations?

Senator WAGNER. Won't you read on, Mr. Emery?

Mr. EMERY. I know, but pardon me just a moment. What investigations? It must be the investigations the Board is authorized to conduct.

Senator WAGNER. Yes; but——

Mr. EMERY (interposing). Just a moment. The Board upon its own initiative may proceed to investigate for the purpose of determining whether or not there has been any violation of the so-called "unfair practices."

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Senator WAGNER. I am not going to get into a controversy.

Mr. EMERY. Is not that so, Senator?

Senator WAGNER. I am going to be content to read the section. I think I know what the English means. It says:

SEC. 13. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9, section 10, and section 12.

Mr. EMERY. Yes, sir.

Senator WAGNER. That is clearly a limitation.

Mr. EMERY. All right. Now, the sections authorized the Board——

Senator WAGNER (interposing). One is elections.

Mr. EMERY (reading):

The Board, or its duly authorized agents, or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against——

Senator WAGNER. Yes, sir; exactly.

Mr. EMERY. Certainly.

Senator WAGNER. That relates to unfair labor practices.

Mr. EMERY. Yes.

Senator WAGNER. I am not going to continue this thing; I mean that if the committee has any other language to suggest to limit it, it may do so.

Mr. EMERY. Yes.

Senator WAGNER. But certainly the language is as clear as I could write it, that it is limited to unfair labor practices in section 9; section 10 is elections. I do not know how or what more specific language you can use to limit it. And this is the last time I will refer to it.

But when you spoke about their power to investigate almost anything in connection with these provisions, I just wanted to call to your attention that this is even more restrictive than the provisions of the Federal Trade Commission Act, although as near as could be I have copied the words of that act, and you cannot investigate anything except what relates to the subject matter. If you want to use the word "pertinent" instead of what is there it might be used.

Mr. EMERY. Senator, I would not venture to suggest any verbal additions to your structure.

Senator WAGNER. I would hesitate to take it, you know, because of your point of view, not your sincerity.

Mr. EMERY. I gather that you fear not only the Greeks bearing gifts.

Senator WAGNER. Did you favor the Norris-LaGuardia Act?

Mr. EMERY. No; I did not.

Senator WAGNER. I thought not. You quoted it as authority this morning. I thought you might have favored the act yourself.

Mr. EMERY. I assume you did?

Senator WAGNER. Yes; I did. I think I made a very excellent speech in behalf of it.

Mr. EMERY. I have no doubt but what you did. You always make excellent speeches.

Senator WAGNER. So do you.

Mr. EMERY. I called your attention to it, Senator, because you omitted from your bill the underlying broad declaration asserting

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right of association which asserts also the right to decline to associate with others.

Senator WAGNER. I think this is in the bill, so we won't quarrel.

Mr. EMERY. Yes.

Senator WAGNER. Since you referred to this Texas case, I am going to read just a few of the sentences from the opinion of Justice Hughes, because I think you will agree in that case the Court distinctly recognizes the majority rule.

The substance of the allegations of the bill of complaint was that the Brotherhood—

which was the union.

Mr. EMERY. Yes.

Senator WAGNER (continuing reading:)

since its organization, in September 1918, had been authorized by a majority of the railway clerks in the employ of the railroad company (apart from general office employees) to represent them in all matters relating to their employment.

And, as you remember, although elected by a majority they did in their negotiations represent all the clerks. The majority rule was adopted there—

that this representation was recognized by the railroad company before and after the application by the Brotherhood in November 1925, for an increase of the wages of the railway clerks and after the denial of that application by the railway company and the reference of the controversy by the Brotherhood to the United States Board of Mediation; that, while the controversy was pending before that Board, the railroad company instigated the formation of a union of its railway clerks (other than general office employees) known as the "Association of Clerical Employees, Southern Pacific Lines", and that the railroad company had endeavored to intimidate members of the Brotherhood and to coerce them to withdraw from it and to make the association their representative in dealings with the railroad company, and thus to prevent the railway clerks from freely designating their representatives by collective action.

That is a case where the company deliberately formed a company union to thwart the legitimately organized union.

The district court granted a temporary injunction. Thereafter the railroad company recognized the Association of Clerical Employees, Southern Pacific Lines, as the representative of the clerical employees of the company. The railroad company stated that this course was taken after a committee of the association had shown authorizations signed by those who were regarded as constituting a majority of the employees of the described class.

So that both sides of it contended for the majority rule, and that was upheld by the court.

The subsequent action of the railroad company and its officers and agents was in accord with this recognition of the association and the consequent nonrecognition of the brotherhood. In proceedings to punish for contempt, the district court decided that the railroad company and certain of its officers who were defendants had violated the order of injunction and completely nullified it. The court directed that, in order to purge themselves of this contempt, the railroad company and these officers should completely "disestablish the Association of Clerical Employees"—

that is the company union—

as it was then constituted as the recognized representative of the clerical employees of the railroad company, and should reinstate the brotherhood as such representative, until such time as these employees by a secret ballot taken in accordance with the further direction of the court, and without the dictation or interference—

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Here are the words "interference"—

of the railroad company and its officers, should choose other representatives. The order also required the restoration to service and to stated privileges of certain employees who had been discharged by the railroad company.

They are discharged for activity.

Now, just one other quotation. As long as my friend, Mr. Emery, has quoted Justice Hughes extensively, I think I have the right to quote from his opinion, too.

Mr. EMERY. I have just been quoting from the same opinion, Senator.

Senator WAGNER. Yes; and I am choosing some other sentences.

Mr. EMERY. Sure.

Senator WAGNER (reading):

The legality of collective action on the part of employees—

This is on this question of liberty to promote agreements with the employers.

in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. * * *

Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interference with freedom of choice. Thus the prohibition by Congress of interferences with the selection of representatives for the purpose of negotiation and conference between employers and employees, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both.

That is all.

Mr. EMERY. I only regret that the Senator, in reading that opinion, does not happen to read that section in which the court refers to the fact that Congress is here regulating the employment relationship of an instrumentality of interstate commerce. The difference between that proposition and your bill is the difference between regulating the domestic relations in a State and regulating a well-known, long-understood, never-disputed jurisdiction of the Congress. That is fundamental, that is all.

Senator WAGNER. I read sometime ago——

Mr. EMERY (interposing). Of course, let me call your attention, Senator, to the fact that your majority rule there is not before the court under a provision of law, but is taken as one of the evidences, and very proper evidences, of whether or not there had been any interference with the right of organization of the railroad employees, which was assured to them. Congress was entirely within its right in protecting it. I do not dispute that, and I never have.

But I want to call your attention to the fact that the many proponents of the measure, who associate themselves so sympathetically with you, do not accept the proposition that where a majority is disclosed they will accept it.

In the American Magazine for this month, Mr. William Green, the distinguished president of the American Federation of Labor, is interviewed by Mr. Henry F. Pringle, a well-known journalist, and there in conference he sets forth what labor wants. In discussing this very question he is asked:

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But, suppose, for the sake of the argument, that the majority of a given factory's workers actually vote for the company union. What will organized labor do then?

To which Mr. Green responds:

Organized labor will accept temporarily the decision of the majority vote. But in an orderly, legal, and educational way we will endeavor to persuade the workers to unite and organize into a bona fide trade union.

Last Friday the Labor Board in the *Kohler case* finally decided that the union, which had been defeated in the election—the outside union—was not entitled to an appeal which it registered against the vote of the Koehler workers, yet 6 months elapsed between the application and the decision of the Board.

I want to illustrate, not for the purpose of criticizing organized labor, but for the purpose of calling to your attention, first, that majority opinions not only will not settle matters satisfactorily to either group permanently, as the Senator seems to think, but that it constantly happens in the elections that are held that majorities do not develop.

Mr. Walter Lippmann, in his very caustic analysis of the Senator's bill, being one of his constituents——

Senator WAGNER (interposing). I know you must have gotten joy out of that.

Mr. EMERY. I did.

Senator WAGNER. I have written a letter to the paper in that regard.

Mr. EMERY. Not withdrawing your subscription, Senator?

Senator WAGNER. In which I answered Mr. Lippmann, which I hope will be published.

Mr. EMERY. I am sure it will.

Senator WAGNER. However, I have some doubts about it, but I hope it will be published, because—all right, I won't characterize it. Read my letter.

Mr. EMERY. Certainly, Senator, I will read your letter.

Senator WAGNER. It might persuade——

Mr. EMERY. I would not want to read it in public. I want to spare a tear.

Senator WAGNER. Do not say that. I can take it. I have been fighting for these things for 25 years.

Mr. EMERY. Sure.

Senator WAGNER. With every organization like yours opposing every step in the line of progress. But we are going on in spite of that proposition.

Mr. EMERY. Yes.

Senator WAGNER. And never once got a boost of your organization favoring any of the bills that we enacted in New York, or even down here. I have been able to take it.

Mr. EMERY. I did not know you had enacted anything like this in New York, sir.

Senator WAGNER. I was pictured as an anarchist for introducing a workmen's compensation law in New York by the conservatives. But, as I say, do not worry about me. I can take it.

Mr. EMERY. You have demonstrated that, Senator.

Senator WAGNER. I mean you do not need to shed any tears for me.

Mr. EMERY. Oh, no; I manage to restrain myself.

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I merely want to call attention to the fact that Mr. Lippmann has pointed out that which I think any layman can see that this bill is not workable. And Mr. Lippmann quotes:

> The trouble with this is that it assumes elections will show a clear majority of all employees. That is a mistaken assumption. If the Senator will re-read the decision of the National Labor Relations Board in the *Houde case* he will see that this very decision upholding the majority principle clearly recognizes that it applies only when there is in fact a majority. "Nor does this opinion lay down a rule", it says, "where, in an election representatives have been chosen by a mere plurality of the votes cast or by a majority of the votes cast, but by less than a majority of all employees entitled to vote."

In the automobile industry, which must be fairly typical of the nonunionized industries, there is no clear majority for anybody. That was demonstrated in the testimony as to the election in which 168,000 votes were cast, and in which about 4½ percent were affiliated with the American Federation of Labor. The rest were affiliated with different organizations, and none at all in a great majority; and yet in the election which followed they elected as representative all members of the industrial family, both union and nonunion, were elected by representatives as their agency.

Senator WAGNER. I am going to take the liberty, if the chairman permits me, when Dr. Leiserson gets on the stand, to ask him some questions about the balloting in that particular election.

Mr. EMERY. When you do, Senator, I hope you will notice the Board was established by the Government of the United States through an agreement with the President.

Senator WAGNER. Yes, sir.

Mr. EMERY. And if there is anything wrong with that Board, it is a direct reflection on the Chief Executive.

Senator WAGNER. Not necessarily.

Mr. EMERY. He appointed it. It is under his supervision.

Senator WAGNER. Yes.

Mr. EMERY. And he has in his hands power to remove it if it fails in its purpose.

Senator WAGNER. Yes.

Mr. EMERY. And that merely illustrates again the utter difficulty of findings and conclusions by the mere method suggested. Just as soon as they failed to reach a result which was anticipated by either party immediately the decision is questioned by either party. It merely illustrates the difficulties when the Government enters the delicate field of employment relations. They are a growth not imposed from without but to be developed from within.

Senator WAGNER. In this railway case the Court, which is a part of the Government——

Mr. EMERY (interposing). Yes, sir.

Senator WAGNER. Had to intervene, or the company union would have prevailed, because the employers simply refused to recognize the brotherhood.

Now, the Court was convinced, or at least the brotherhood convinced the Court, that as the result of an election they represented a majority of the clerical force. Then the Court recognized them, having been elected by a majority, as the bargaining agency for all of the clerks.

You can argue day and night, Mr. Emery, but that is the record of the Court, and Mr. Justice Hughes upheld that method of nego-

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tiation as being a protection of the rights of the workers and not a destruction of their rights.

Mr. EMERY. I am urging, Senator, you adopt the same remedy here.

Senator WAGNER. That is what I am doing, the majority rule.

Mr. EMERY. But you are not adopting the remedy at all. You are substituting for the Court an administrative body.

Senator WAGNER. I am going to, if I may for a moment, just read on this question of the flexibility of this power to apply to modern conditions some views expressed by Mr. Justice Hughes in his book, The Supreme Court of the United States, which undoubtedly you have read.

Mr. EMERY. Yes, sir.

Senator WAGNER. And he says this [reading]:

I have spoken of the negative effect of the Constitution, and of the laws under its authority, that is, their effect in overriding State legislation. How far does the power of Congress go in its affirmative action under the commerce clause. The power to regulate is the power "to foster, protect, control, and restrain." Chief Justice Marshall said that it was as wide as the exigencies which called it into existence, and it may be added that under the decisions of the Supreme Court it remains as wide as the modern exigencies it must meet in relation to interstate and foreign commerce. Few lawyers, 40 years ago, would have dreamed of the extensive schemes of Federal legislation which have successfully passed judicial scrutiny as to their constitutional validity.

And on page 153:

There are three outstanding characteristics of the recent legislation of Congress under the commerce clause. One is, not simply the broad action of Congress in relation to transactions in interstate commerce, but the entry of Congress, either directly or through its agencies, into what many had supposed to be the exclusive province of the State in dealing with intrastate activities. This has not been due to the recognition of any power of Congress to deal with the internal concerns of the State, as such, but to the comingling of interstate and intrastate transactions, so that the government of the one involves to an extent the government of the other.

I did not want to read too much, but here is just one other paragraph, Mr. Chairman.

The CHAIRMAN. All right.

Senator WAGNER (reading):

Another characteristic is the extension of the authority of administrative bodies equipped with power to determine questions of fact beyond judicial review, providing action is taken within the authority properly delegated and the essentials of due process are observed. Evils must be controlled and the exercise of legislative power must be broad enough to cope with the difficulty of solving the many questions of fact in a host of particular instances which lie within the sphere of the application of legislative standards. To an increasing degree the activities of commerce are falling into the control of bureaus and commissions.

Now, you have quoted Mr. Justice Hughes, so I thought I would quote him, too.

Mr. EMERY. Surely; I am very glad you did, Senator, only you would have done it more effectively if you had been quoting him in respect to the same case I was quoting him with respect to control of production.

In that respect I would like to call your attention to the matter which we have discussed here so much, since you quoted the distinguished Justice, and I would like to call your attention, if I may, to the point we have repeatedly called your attention to here, which

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is throughout the proposal for fair practices and the enforcement against unfair practices evasion is constantly practiced whenever it is suggested that the restriction on coercion, as suggested by the President, should be applied to all persons, just as the gentlemen who appeared here from the Twentieth Century Fund, who said they made that as one of their——

Senator WAGNER. He said, as I recall it, that they used the words "fraud and violence."

Mr. EMERY. Yes; from any person—not employers—from any person.

Senator WAGNER. He did not use the word "coercion", as I recall it. He used the words "fraud and violence."

Mr. EMERY. Yes; even the LaGuardia Act uses the words "threatened, fraud, and violence." Of course, I still think that there is the use of an exercise of equity without regard to the character of offense here. But Mr. Justice Brandeis all through his legal life was insisting on the fact, even though he was sympathetic with the trade-union movement, that its serious error was to constantly avoid its liability, to seek, if you please, collective bargaining, without assuming collective responsibility for its exercise, the enforcement of its contracts and the acceptance of its liability.

He said in his last edition of his addresses, 1934, with a foreword by Professor Bonbright, and refers again—I assume he has not changed his mind since he has reedited his remarks I read from his book, Business—A Profession:

> This practical immunity of the unions from legal liability is deemed by many labor leaders a great advantage. To me it appears to be just the reverse. It tends to make officers and members reckless and lawless and thereby to alienate public sympathy and bring failure upon their efforts. It creates on the part of the employers also a bitter antagonism, not so much on account of lawless acts as from a deep-rooted sense of injustice, arising from the feeling that while the employer is subject to law the union holds a position of legal irresponsibility.

So it is with his very practical mind.

He calls attention at another point to one of the primary difficulties with which I think you are confronted here. That is, you cannot settle all these questions with which you endeavor to force agreement between the parties by imposing authority from without. There are things on which it will be impossible for them at some time to agree, on which they must take a definite position—both parties—one or the other.

Mr. Justice Brandeis says again on page 24, referring to arbitration, in his remarkable book:

> This remedy deserves to take its place among the honorable means of settling those questions to which it properly applies. Questions arise, however, which may not be arbitrated. Differences are sometimes fundamental. Demands may be made which the employer, after the fullest consideration, believes would, if yielded to, destroy the business. Such differences cannot be submitted to the decision of others. Again, the action of the union may appear to have been lawless or arbitrary, a substitution of force for law or for reason. What, then, should be the attitude of the employer?

Now, he answers this interesting question by suggesting an answer in much the same terms for which the distinguished Senator from New York thinks me a profound reactionary.

Senator WAGNER. I never characterized you as that.

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Mr. EMERY. Then he answers his own question:

> Lawless or arbitrary claims of organized labor should be resisted at whatever cost. I have said that it is essential in dealing with these problems that the employer should strive only for the right. It is equally as important that he should suffer no wrong to be done unto him. The history of Anglo-Saxon and of American liberty rests upon that struggle to resist wrong—to resist it at any cost when first offered rather than to pay the penalty of ignominious surrender. It is the old story of the "ship money", of "the writs of assistance", and of "taxation without representation." The struggle for industrial liberty must follow the same lines.
>
> If labor unions are arbitrary or lawless, it is largely because employers have ignominiously submitted to arbitrariness or lawlessness as a temporizing policy or under a mistaken belief as to their own immediate interests.

I suggest, Mr. Chairman, that calm, cool, critical advice from the distinguished associate justice will not be attributed to lack of sympathy with labor movement, but rather it rises from what I undertook to refer to this committee as some of the fundamental rights that the Supreme Court of the United States has said, "We thought had been put beyond experiment", but which are continually being experimented with.

The CHAIRMAN. Dr. Leiserson, will you please come forward?

STATEMENT OF DR. WILLIAM M. LEISERSON, CHAIRMAN OF THE NATIONAL MEDIATION BOARD, WASHINGTON, D. C.

The CHAIRMAN. Your full name?

Mr. LEISERSON. William M. Leiserson.

The CHAIRMAN. Where do you reside?

Mr. LEISERSON. In Washington.

The CHAIRMAN. Have you any official position in Washington?

Mr. LEISERSON. I am the Chairman of the National Mediation Board, which is the Board that administers the Railway Labor Act.

The CHAIRMAN. That is a law passed last year?

Mr. LEISERSON. Yes; it was amended last year.

The CHAIRMAN. Yes.

Mr. LEISERSON. I have also been a member, or, rather, Chairman of the Petroleum Labor Board, which operates under the N. R. A., and prior to that I was executive secretary of the National Labor Board.

The CHAIRMAN. Do you desire to make a presentation to this committee of your views? We would be glad to hear you.

Mr. LEISERSON. I might add before doing that, that I have been a member of this committee, of this Twentieth Century Fund, that recently studied this whole question.

The experience that I have had in recent years in mediating and arbitrating labor disputes, both under the National Recovery Act and under the Railway Labor Act, has given me an opportunity to compare the policies that are formulated in both of those acts, or as they have been administered by the administrative board under the acts. And it is upon the point of view of the experience in that comparison that I would like to discuss this bill that is before you as 1958.

I regard this bill as a great improvement over the bill last year, because it separates out the question of enforcing the right to organize and to bargain collectively; enforcing that right it separates

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that out from mediation and conciliation of labor disputes as between employer and employee. I think that point is extremely important, because as a member of that Board, when I appear to conciliate or mediate a labor dispute, both employers and employees must have confidence in me that on the matters in dispute I am not siding with one side or the other, that I am coming in there to bring the parties together in an adjustment of their own. I have no authority over them except as a conciliator to bring them together.

The moment one of them feels that I will be making decisions against him, or I have made decisions against him, I cannot succeed as a conciliator, an arbitrator, or a mediator.

If I at the same time that I am mediating have to enforce the law, the employer who does not like the law says you are partisan and favoring the employees as against me. Whereas, what I am really doing is partisan in favor of the law, just as any judge is. And it is impossible to make either employers or employees see that when I am there as a Board member I am very partisan in favor of the law, because I have been sworn to uphold the Constitution and the laws of Congress. It is impossible to make him see that I am not siding with one side or the other, because the law happens to give rights to one side or the other. Therefore I think it is extremely important to have the problem of enforcing, the right to organize and to bargain collectively in a board that is not mixed up with mediation and conciliation of labor disputes.

And this bill, as I understand it, limits the authority of the proposed National Labor Relations Board to law enforcement to seeing that the right to organize and the right to bargain collectively is carried out without interference by the employer.

Now, it is important to note that the Railway Labor Act, and section 7 of the Recovery Act both use the same language. They say, "Employees shall have the right to organize and to bargain collectively without interference, influence or coercion of the employer." Now, both of those acts were enacted by the Congress.

In the Railway Labor Act, because apparently Congress has had more experience in dealing with railroads, they put in some details which explained how that right is to be administered. But in section 7 (a) they did not put those details in. But it seems to me the right to organize and the right to bargain collectively cannot be two different things under those two different acts. They must mean the same thing. And the right to organize and the right to bargain collectively is a right that has a well-defined meaning.

I think the preceding speaker confuses some of the things that this bill deals with, because he did not have clearly before him what the right to organize and what the right to bargain collectively mean.

For about 100 years in this country, employees have had the right to organize and to bargain collectively. Prior to that time it was a conspiracy. But at the same time that the employees had the right to bargain collectively and to organize the employer had the equal right to try to destroy their organization. There was nothing to prevent him for interfering with their organization, from discriminating, or from coercing people. That right was in the employer. And the only change that was made in the right to organize in the Rail-

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way Labor Act and in section 7 (a) is to take away that previous right that the employer had to destroy the associations of employees. That precise question was up before the Supreme Court in the case that was quoted here, the *Texas & New Orleans case*, and Senator Wagner has spoiled my speech a bit by reading from that. But the court takes occasion to say that Congress was not satisfied as the result of long experience with the railroads, and railroad labor disputes, with just merely stating the right of the employees. It found as a result of that experience that it had to impose a corresponding duty on the employer to refrain from interfering with the right of the employees. And the carriers, rather, the employers, claimed that when the Government said to the employers, "You must not interfere with the employee's right to organize", that Congress, when it prohibited that interference, was interfering with the constitutional rights of the employers. And here is what the court said:

> The petitioners invoked the principle declared in *Adair* v. *United States*, and *Coppage* v. *Kansas*. But these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employer, but the interference with the right of employees to have representatives of their own choosing.

Now, here is the importance in it:

> As the carriers suggest that the act has no constitutional right to interfere with the freedom of the employees in making their selection they cannot complain of the statute on constitutional grounds.

Now, as I get this act, it tries to make real the right of the employees to organize and bargain collectively by preventing interference with that right. Besides saying that interferes with constitutional rights of employers, employers also say that that would upset peaceful relations between them and their employees. As a matter of fact, after 25 years of experience of mediating and arbitrating labor disputes I can testify that there is nothing more important because of strife and strikes than attempts on the part of an employer to interfere with the constitutional right of employees to associate themselves for collective bargaining.

The Railway Labor Act as recently amended represents the best experience that this country has had in dealing with labor relations. We began in 1888, and we had the most bitter strikes in the history of the country during 1886, and those were the railroad strikes. They were the most bitter ones. We had the act of 1888, the Erdman, and then the Newlon Act, and the Transportation Act of 1920, and the Railway Labor Act of 1926, and the recently amended act, and each one was an improvement on the other.

We learn from experience the only way we will ever have peace on the railroad is to say that the railroad employees have the same right to associate themselves and act through a body that the investors in railroads have. And just as no labor union interferes with the right of a lot of stockholders to choose their representatives and board of directors, or their managers, or representatives, to deal with the employees, and you do not need any laws on that question any further than what we have, so the employers should not be permitted to interfere when investors of labor want to set up similar entities to these corporations.

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And the Supreme Court takes occasion to say that since the Railway Labor Act was enacted to promote peace in the industry, not to interfere with peaceful relations, because Congress saw that they often interfered with peaceful relations.

Let us see what this right to organize means. Something over 100 years ago, when corporate enterprise was new in the country, when it had to be set up by special incorporation laws, the same objection was made to those corporations that is now made to organizations of labor. They said it was a special privilege, and they said further it would be a monopoly, and there was one of these ephemeral third parties in existence at that time, in the thirties known as the "Anti-Monopoly Party." And their main platform was to prohibit corporations; and natural persons had the right to do business and be free to engage in enterprise any way they wanted to, but not one of these artificially created organizations by the Government, which represents a special privilege, and in their minds it was a socialistic device for the Government to take a lot of people and scatter them all over the world and incorporate them and call them a person in the eyes of the law. And the people who saw that it was needed, that corporate enterprise was needed to carry on our business, were charged with trying to set up a monopoly as capital.

The CHAIRMAN. Do you think it was a good thing?

Mr. LEISERSON. To have corporations?

The CHAIRMAN. Yes.

Mr. LEISERSON. Very much, sir.

The CHAIRMAN. I think the lack of control of corporations and the failure to restrain them is a large part of the cause of this depression.

Mr. LEISERSON. I have no doubt——

The CHAIRMAN (interposing). So we created something that went uncontrolled for years.

Mr. LEISERSON. That is right; I have no doubt——

The CHAIRMAN (interposing). Individuals and partnerships never would have brought us to this.

Mr. LEISERSON (continuing). That the permission granted to people to incorporate brought a lot of new problems. But I am impressed that every device that human beings have set up for remedying evils which they suffered brings on a new problem of its own. You need nothing better to refer to than the money problem. Money is the greatest invention mankind ever made as a substitute for barter and for other exchanges. It was a wonderful thing. But you know it has brought a lot of problems. Similarly, the corporate device, it seems to me, was a good device. I think it was a mistake to give the corporations the same right that an individual, natural person has. And if they had been limited we might have avoided much of our trouble.

We are at the point where industrial development has the preamble or declaration of policy and this bill says, where industrial corporate development makes it possible for 100,000 or more investors of capital to associate themselves and deal as one persons, select their own managers, and then those same people go to the employees and say, "When you want to associate yourself and deal with us as one person we won't let you; you must deal with us by individual bargaining." Now, that is just about as reasonable as if the labor union should

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say to the employer, "We do not want to deal with you as a corporation. We insist upon dealing with Mr. Jones and Mr. Thompson, who own stock in your corporation." And yet employers constantly come along and insist that they will deal with individuals. But whether we like it or not the employees want to associate themselves for bargaining collectively.

Now, collective bargaining has a well-defined meaning, the basis of which is cooperative marketing of labor. That is all it is. That is the basis of it. Instead of half a dozen of each class going and saying, "I will work for 27 cents", and this fellow for 30, and that fellow for 35, we pool our labor and we select a sales agent to sell our labor collectively to the employer. That is what collective bargaining means. If the employer can have something to say about who the sales agent shall be we would be in the position of the customer dictating who should be the sales agent of the fellows who have goods to sell.

And that is just what the issue is in this case. Now, the employees have developed a lot of sales agents. And sales agents, whether of labor or of any other things, are not a class of people that a lot of people like. When I see an insurance agent I run away. When I see a high-powered salesman, I do not like him. But he has a right to do business in his own way. And similarly, the employers do not like the business agents, as they are called, trade unions, because a business agent of a trade union is not afraid that he will lose his job. His salary comes from the employees who employ him cooperatively to sell their labor. And so the employee insists, and every one of the so-called "company union" plants determines (a) when the question came up provided that no employees can select a sales agent who is not an employee of the company; who is going to buy the labor. And, obviously, if the employer has the right to fire the sales agent, the sales agent is not going to get a very good bargain. And that is one of the reasons for preventing the employer from saying who the representatives of the employees shall be, and what kind of an organization the employees shall form.

You have heard testimony here that these organizers from the trade unions are troublemakers. And, in a sense, they are. But, from the point of view of a person who has to deal with both sides, the representatives of the employers are exactly the same kind of troublemakers. You had a letter read here into the record this morning. A large corporation hires a business agent. That is what he is, only he buys labor instead of selling it. He is an outsider. The personnel managers, or vice presidents in charge of personnel, are exactly the same kind of labor agitators that trade-union leaders are, only their business is to organize the employees for the employer, a perfectly legitimate occupation; I am not criticizing them; I deal with them and recognize their functions. They are high-powered buyers, and the other fellows are high-powered sellers. And, believe me, when you get in between them, you have got to have your wits about you.

But it is not fair, in my judgment, and in the railroad industry, where we deal, we do not find one of these bunches of sales agents, or sales buyers, casting stones against the other. They deal with

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each other on a pure business basis. They make agreements. We never see the presidents of the railroad companies or the directors. The railroad companies appoint business agents or representatives. They may be outsiders. Many of the personnel managers are psychologists. They come from universities.

The CHAIRMAN. That makes them psychologists, I suppose?

Mr. LEISERSON. They are, in a sense, brain trusters. They come from the psychological departments, because the employers want them to understand the psychology of human beings, and they give them all sorts of tests.

Now, they are outsiders. Similarly, the employees are outsiders.

Now, from the point of view of one of this crowd blaming the other, I think this is important to note, that so long as the employers question the right of the employees to hire personnel managers, a right that they have themselves, or sales agents, whichever you want to call them, then the employees have to fight for their rights. And a mild, gentlemanly sort of a salesman does not get very far, and the type that survives is a more blustering, fighting kind of a representative of labor. And that is the type of people, the fighting kind, that survived in the railroad business, 20 years ago, when they had to fight for their right to do business on a cooperative basis.

As soon as the railroads began to say, "Sure, you have a right to represent the employees; let us sit down and make a contract or an agreement", and there are thousands of these agreements on the railroads, and from that time on the type of labor leader, or personnel manager, for the labor people was a more businesslike type, and he is a good deal like the fellow on the employer's side.

As a matter of fact, the whole theory of the N. R. A., it seems to me, rests on the idea that what we need is collective organization of the people who do business in industry, whether they do business as laborers, or as business men. If you sit as a mediator, as I do, you cannot recognize that the employers are the only ones that are in business. These laborers who come to me, as the laborers, come to me to do business, the material men, the various groups, that have to make contracts are in business. We have discovered that if we let each individual business man, doing business on his own, regardless of the interests of the industry as a whole, then all sorts of unfair practices creep in. We find that if laborers compete alone, wages go down to $4 a week.

We find if business men, material men, compete alone, their prices may go down to less than the cost of production. And individuals may use all sorts of unfair practices in competition.

Therefore, the N. R. A. encourages the organization of trade associations. And that is all, it seems to me, collective bargaining, exactly, under the supervision and control of the Government.

The CHAIRMAN. Of course, that is all in one line of activity.

Mr. LEISERSON. Yes; all in one line of activity.

The CHAIRMAN. It is not a combination of the merchants who supply a variety of raw materials.

Mr. LEISERSON. That is right. The same is true of labor.

The CHAIRMAN. You would not advise that?

Mr. LEISERSON. No, sir.

The CHAIRMAN. Then you do make a distinction between contracting individually between the employee and individually contracting with the suppliers of raw materials?

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Mr. LEISERSON. No, sir; I was just coming to that point.

The CHAIRMAN. All right.

Mr. LEISERSON. When we speak of collective bargaining, if we mean cooperative marketing of labor, then it means, obviously, that you cannot have under ordinary circumstances, bricklayers, and railroad brakemen, selling their labor together.

Therefore, if you look in the Railway Labor Act, it says:

> The majority of any craft or class of employees shall have the right to choose the representative of the whole of that class or craft.

Now, this act varies that phraseology by using the term "appropriate unit." On the railroads, class or craft is a fair division, although it is giving us a good deal of difficulty in determining what is a class or craft, and we are in court now to question whether our judgment was correct in setting this as a class or craft.

In the railroads, for instance, the electrical workers in a shop, if they want to organize, they are free to do it, and a vote is taken. We supervise that election, and if a majority of the class of electricians or craft of electricians do it; similarly, the brakemen; conductors similarly, and engineers.

When you get out into industry generally, you can not use class or craft. You will have to get the particular procreate unit, and that is why I take it this bill provides the majority of any appropriate unit.

Now, why the majority? If you are going to make a cooperative contract covering labor, you have got to put in writing how much conductors shall get, how many hours they shall work, and so on. If you are going to have one group of conductors come along and say, "We want $1.50", and you bargain separately with another group at $1.25 an hour, and another at $1 an hour, and make those different contracts, the whole purpose of collective bargaining has gone.

The CHAIRMAN. Do you not distinguish between conductors on freight trains and conductors on passenger trains?

Mr. LEISERSON. Yes, sir; we distinguish, in practice, wherever they represent a different group. Conductors in the yards, for instance, are a separate group.

It is significant that on the railroads, where they have had experience with collective bargaining, and where the act starts out explaining what collective bargaining is, by saying, "in order to prevent the interruption of commerce, carriers and their employees shall make every effort to make and maintain agreements"; that is, they make a collective bargaining contract in writing, and the law provides that all those shall be filed with this Board. When they make that, if there are different grades of labor, there may be different grades of labor in one class. The same way when cooperative egg producers sell eggs. They grade the eggs into strictly fresh eggs, ordinary eggs, and storage eggs. Similarly, they class these different conductors. For instance, ticket collectors, or a grade of conductors, and so on.

But in order to make that agreement of contract, you can have only one for that class of labor, and in order to get one there is only that distinct process of there taking the majority.

On the railroads there is no question on that. There are so-called "company unions" on railroads, as in other industries, both the

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company unions and the other unions. The carriers agree that the only way to carry out collective bargaining is by finding out the majority of the class or craft, and then to take that as a representative, and you deal with those who make the contract.

But that does not do away with the right of the individual employee or group of employees, if a fellow feels he has not been given the proper rate under the contract, or instead of working 8 hours, as the contract requires, he has been made to work 9 hours, or he has any other things that affect him, or a group, they can go to the management and represent themselves, or take anybody else, but they cannot violate the contract. Both they and the employers are bound by the contract.

The CHAIRMAN. They can resign.

Mr. LEISERSON. What is that?

The CHAIRMAN. They can leave the employment.

Mr. LEISERSON. Yes; they can leave the employment. But they can get their rights under the contract and confer with the employer.

Now, I would like to call attention to another phrase used by Mr. Chief Justice Hughes in this Texas case.

The CHAIRMAN. Of course, I suppose the theory upon which the majority is used, the representatives of the majority are recognized for the purposes of collective bargaining, is that the men are more likely to be satisfied, and less likely to strike, when any agreement entered into meets with the approval of the majority?

Mr. LEISERSON. That is right.

I would like to call your attention to your section 9, subsection (c), of this act. I do not know whether anyone has brought this out before, but I think it is important to add a few words to the language on that subsection (c) on page 10:

Much of the confusion, if I may say so, in Mr. Emory's and other speakers' minds is because they speak of strikes, and labor disputes, as if they were all the same thing. Now, then, once you concede the right of employees to choose their own directors and personnel managers, the same as the employers do, without interference from the stockholders or representatives of stockholders, then the question of who shall represent the employees is none of the employers' business.

The CHAIRMAN. There seems to be a hostility in the minds of most of the employers against the possibility of having to engage in collective bargaining with someone outside their own employ.

Mr. LEISERSON. That is right.

The CHAIRMAN. You have got that same situation under the Railroad Act?

Mr. LEISERSON. Oh, not now, at all. We had it 20 years ago, but not now at all, because they see they are dealing with responsible organizations.

And I may say that they deal with about 24 labor organizations on the railroads; about 6 of them are not in the American Federation of Labor, and about 18 are. That is for the purposes of this act, whether they belong to the American Federation of Labor or do not belong, or whether they are affiliated with a labor union, with a national union, or with a local union, makes no difference. And the opposition to organization is primarily, as you have mentioned, Senator, the primary objection is dealing with the outsider, and it is the same objection that the big processing companies that buy from the

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farmers have all had in dealing with an agent of the small farmers, who is the sales agency. When the farmers got into cooperatives and wanted to sell their eggs, and butter, and cheese, and wheat through marketing organizations, cooperative-marketing organizations, and they paid fellows high salaries to sell all their stuff together, the big buying companies went around and said, "You do not want to sell through that fellow; he is an outsider. I can deal with you on a man-to-man basis." And it is the same essential economic difference. It is not something for which they are to be blamed, or that you pass judgment on. It is simply a question that if in this case the farmers think, as the laborers do, they can get a little better bargain by having better salesmen. The employer does the same thing. Sometimes he uses a jobbing house to sell for him, and sometimes he sets up his sales organization; whichever he thinks will get him the best results he uses.

And in the eyes of the public interest, I should say that we want to encourage the laborers to be just as efficient in hiring salesmen and deciding whether they want to do it with this group or with that group as you want employers and farmers to be, because the more efficient laborers are in having better salesmen, the less we will have to pay out in relief, and the higher our standards of living will be.

A representation dispute is not a labor dispute. A labor dispute is a dispute between employer and employee, over terms of employment.

The CHIRMAN. Or terms of collective bargaining.

Mr. LEISERSON. But section 9 of the Railway Labor Act reads:

> If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this act, it shall be the duty of the mediation board, upon request of either party to the dispute, to investigate such dispute and to certify to the parties—

Meaning to the two or three groups of employees, whomever they nominate, through the majority, and also certify to the carrier the chosen representatives.

The CHAIRMAN. Do you permit the carriers to be a party to that controversy?

Mr. LEISERSON. No, sir.

The CHAIRMAN. You do not?

Mr. LEISERSON. No, sir. And the carriers do not want to.

When we get such a complaint, or, rather, when we get an application for our services——

The CHAIRMAN. We have not made that distinction in this bill, have we?

Mr. LEISERSON. No, sir. That is why I am calling attention to this section (c). It reads this way:

> Whenever a question affecting commerce arises concerning a representation of employees, the board may investigate such controversy.

I would say, "whenever a question affected in commerce arises among the employees."

The CHAIRMAN. The same suggestion that was made yesterday?

Mr. LEISERSON. Yes, sir.

The CHAIRMAN. Mr. Davis made that suggestion, representing the Twentieth Century Fund.

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Senator WAGNER. Yes; Mr. Davis.

Mr. LEISERSON. Yes, sir; we went into that rather fully.

The CHAIRMAN. Do you agree with all the suggestions he made yesterday?

Mr. LEISERSON. I do not know all he made, but in the main, I do. I signed that report of the Twentieth Century Fund.

I could not tell as to the evidence he might have put in, but I was not sure that he made clear the importance of this board——

The CHAIRMAN (interposing). Yes; he developed that very well.

Mr. LEISERSON (continuing). Of this board if it deals with law-enforcement questions to keep out of the mediation questions. That, I was not sure about.

Senator WAGNER. Doctor, you remember when we were on the board together that most employers that came before us contended that it was quite their business.

Mr. LEISERSON. Oh, yes; very much.

Now, in the railroad industry, we get an application for our services under section 9, which is a representation dispute, and they have to say on the form whom the dispute is with.

And so, of course, if the Brotherhood of Railway Clerks is one of the parties, there may be two or three other sections of the group of parties, but not the carrier. We have to simply notify the carrier, although the law does not require it, simply because we are going to vote the employees there, and we ask the cooperation of the carrier. And the law provides that we shall be able to get copies of the pay roll in order to make up an eligible list of voters. So we usually tell the carrier about it. Usually they write back and say, "We do not want to have anything to do with this. We are absolutely neutral. There are two or three groups of employees competing here, and you settle it, and whomever you certify we will deal with, as the law requires."

Under section 7 (a), that is not clearly put out, and as this is worded, I am afraid the employers may come in. If they do, it would be just the same as if the employees, because they are employees, should walk into a stockholders' meeting and try to elect the managers.

Most of the difficulties of the N. R. A. boards have come in this way: With rare exception, the small employer comes himself. The larger employer rarely does, but sends a lawyer to argue the employer's side of a dispute regarding representation among the employees.

Now, I have due respect for lawyers, and, in their proper place, they have their function. But, when they come in on that kind of a dispute, I have found that they just ball it up.

Under our law we get the representatives of the employees, three or four different groups, and we talk with them, and we ask them how they would like to have the ballot made up, and all of that, and we settle it and there is nobody around except the employees that are interested.

When the employer comes in and says he is an interested party, in the representation, it is here that Chief Justice Lang, in the *T. & N. A. case*, is quoted. He says [reading]:

> Motive is a passive interpreter of equivocal conduct. And the petitioners—

in that case, the railroad—

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are not entitled to complain because their activities were viewed in the light of manifesting interest and purpose. The most that can be said in favor of the petitioners on the question of fact is that the evidence permits conflicting inferences, and this is not enough. The circumstances of soliciting authorizations and memberships in employees' organizations on behalf of the association—

mind you, by foreman and people of that kind—

the fact that employees of the railroad company were active in promoting the development of the association were permitted to devote their time to that enterprise without deduction from their pay, the charge to the railroad company of expenses incurred in recruiting members in the association, the reports made to the railroad company of the progress of these efforts, and the discharge from the service of the railroad company of leading representatives of the brotherhood and the cancelation of their parishes gave support, despite the attempted justification of these proceedings, to the conclusion of the courts below that the railroad company and its officers were actually engaged in promoting the organization of the association in the interests of the company, and in opposition to the brotherhood, and that these activities constituted actual interference with the liberty of the clerical employees in the selection of their representatives.

These clerical employees have a liberty to do that and a right that the Government has given them; and when the employer comes in, the Court makes plain his motive, which may not be bad in the sense of wickedness, but his economic motive is that he wants it to be in favor of the company's business, and the employees want it to be in favor of their business in their relations with the company. And they have the liberty and the right to select their own representatives.

Now, the same is true with respect to motive in arguing against a bill of this kind, I should say. When the question here is whether the employees shall be free in their right to accuse representatives, and when employers come here and say they oppose that, I think, using the language of the Court—and I consider that impartial language of the Court—that they must expect their motives to be questioned. It is in their economic interest not to have the employees free to choose their representatives. And when they oppose that sort of thing, they must not complain, as the Court said, when people think the reason they are complaining is because they do not want quite as good business agents selected by the employees as they would select if they were free from the interference of the management.

The CHAIRMAN. I do not want to divert your mind from any line that you are following, but have you had any questions arise under this law and its amendments as to whether you had jurisdiction over railroad employees engaged in strictly intrastate business?

Mr. LEISERSON. We have had the question raised occasionally. It has not come into any court yet.

The CHAIRMAN. It has not. Now, are there such cases on the way to the courts?

Mr. LEISERSON. I do not think so. We have been threatened two or three times, but most of the railroads, for instance, have contracts, and we have held elections to determine representation for making those contracts of the shop employees and the clerical employees a number of times.

You know it was contended in the trial of the Railroad Retirement Act that those employees are intrastate. But our authority has not been questioned. In a few cases we were told that perhaps we had no right to do it; but when we went ahead and had the elections no questions had been raised. Of course, that question may be decided by the Court in this Railroad Retirement Act, because that was one of the important questions in Judge Wheat's decision.

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Senator WAGNER. That is pending now, awaiting for decision.

The CHAIRMAN. Yes. Judge Wheat decided it was intrastate.

Senator WAGNER. That was one of my babies.

The CHAIRMAN. Judge Wheat decided it was intrastate.

Senator WAGNER. Partially; yes.

The CHAIRMAN. We would like to have your testimony before you are through of your experience with the company union?

Mr. LEISERSON. I meant to come to that; yes.

The CHAIRMAN. And I have a feeling that a good deal of the opposition to this bill on the part of employers would be removed if the language of the bill had liberal terms permitting the organization of company unions that were not dominated by employers. Of course, that would not remove the objections that they have to association agents representing their employees.

Mr. LEISERSON. I was just coming to that.

Senator WAGNER. Liberal terms? Do you mean as to financial, Mr. Chairman, or what?

The CHAIRMAN. What was that?

Senator WAGNER. Do you mean as to financial?

The CHAIRMAN. To the creation of company unions?

Senator WAGNER. You mean financial?

The CHAIRMAN. Yes; partly that.

Senator WAGNER. There is everything else they can do under this act, it seems to me.

Mr. LEISERSON. I want to go into that a little more fully, and suppose I begin by quoting to you testimony that was given before the Senate committee on the Railway Labor Act on the amendments last year.

Senator WAGNER. Before you go on, I think I misstated what I intended to say. I did not mean to say the employer could organize company unions, but if the workers within a company desired it, they have the right to organize.

The CHAIRMAN. Yes.

Mr. LEISERSON. This testimony was given by Commissioner Eastman, the Federal Coordinator, after he had made an extensive study of company unions on the railroads. And he said [reading]:

> Thus Congress recognized that the specific provisions against interference with freedom of choice in the selection of labor representatives should be applied to all railroads, as well as to those which happened to be under the control of judges, receivers, or trustees.
>
> The enforcement of that provision of the emergency act—

Which was under Mr. Eastman—

> has developed in the first instance upon me, and I have done my best to induce compliance. The duty so to do has been a pleasure, because I have no question whatever as to the soundness of the principle involved, and I do not see how it can well be questioned by anyone. Let me make clear what that principle is. It neither undertakes to outlaw so-called "company unions" or to promote the cause of the American Federation of Labor. The principle is simply that the employees shall be free to join and be represented by any labor organization that they wish to join and to have as their representative, and that the railroads shall in no way interfere with their freedom of choice, directly or indirectly. If a company union is what the employees really want, they are free to have it, and the same applies to the American Federation of Labor.
>
> I may say I use the expression "company union" and "American Federation of Labor" because those are the expressions used commonly in the discussion of this subject. As a matter of fact, in the case of railroads, six of the national organizations are not affiliated with the American Federation of Labor.

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To understand this "company union" question you must realize the influence which a company is able to exert over its employees, if it cares to use it, particularly in a time when jobs are not to be had for the asking. It is like the power of life and death, for it means the power to deprive a man of the very means of subsistence. The influence may be exerted at the time when a man wants a job by making him agree to limit his freedom of choice in the matter of labor organizations, or it may be exerted after he becomes an employee by instilling in him the fear that if he does not do as the company wishes he may lose his job. Bear in mind that there are any number of plausible reasons which may be conjured up for demotion or dismissal and that the real reason need not be brought out into the open.

In addition to this use of fear, which is a most potent instrument of influence and easy to employ, there is the hope of gain. This is utilized by paying the salaries of officers or in other ways meeting or helping to meet the expense of favored organizations and extending concessions of this sort to them which would not be extended to organizations which are not favored.

In the investigations which my staff has made I have gone rather exhaustively into this matter, and I entertain no doubt whatsoever that the chief reason why railroad managements prefer so-called "company unions" is because they can more readily influence their policies and management than would be the case with national organizations.

Now, it is subsequent to that that the Railway Labor Act was enacted. Company unions are perfectly legal on the railroads if what you mean by company union is that the employees engaged in the service of one company have gotten together and formed their own organization without any personnel manager or business agent of the employer, or the labor agitator of the employer coming in and telling them how they should organize, and without the employer paying salaries, or in any way favoring them. If the employees on that railroad want their own organization, that railroad, independent from the others, they have a perfect right to have it. In that sense a company union, meaning the employee's union of one company but not a company-dominated union, company-favored union, I take it this bill, and I am satisfied from reading the bill that this bill makes it perfectly possible for the employees, if they prefer to have a union of their own in that company, or three companies together, or a national union, or an A. F. of L. union, or any kind of a union, they have the right to do so if they so choose. But not for the employer to come and say, "I have made this nice organization. My business manager or sales manager has worked this out for you, and this is good for you." That kind of a company union would be illegal under this bill, as you have made it illegal under the Railway Labor Act. I do not think there can be any two positions on that if we learn that what we want here is to make a contract, a commercial contract. One is the buyer; the other is the seller. For a company to come in and say, "I want to be on the selling end of this through my personnel manager, and I will give you a good man, because I pay him a high salary" is obviously to defeat the very purpose of the contract. If the employees are to be free, they have a right to make local shop organizations or branches of a shop, any appropriate unit, or a company as a whole, or cross-company lines, or by industry lines. That is their business.

The CHAIRMAN. Do you think we ought to, through legislation, indicate any choice of organization by the employers? Do you not think that in the natural course of events that weak and unrepresentative company unions will in time become recognizable to the employees and they themselves will make the change that is necessary to get a more effective organization for collective bargaining?

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Mr. LEISERSON. No, sir. And the reason, as stated by Mr. Eastman, if when I get a job I know that the company wants an employee plan that it has worked out, and that when the time for the lay-off comes the fellow who belongs to that will not be laid off and the others will, there are innumerable cases; for example, even under the Railway Labor Act we have found this situation: There was an agreement between a company union and a carrier, which said that for efficiency the mechanics shall get 2 cents an hour more than the agreed-upon rate, and that efficiency rating shall be at the end of every month by representatives of management and representatives of the employees, perfectly fair in a contract. Here is what we found with documentary evidence—that if you belonged and paid your dues in the company association you were efficient and got the 2 cents. If you did not belong to the company association you were not efficient and did not get the 2 cents.

The CHAIRMAN. I think we can see the power to exert economic pressure upon the part of an employer in cases such as you have indicated. But let us take this case: Assume a company union under this bill does permit a company union, and it becomes apparent to observers on the outside that the representatives of the employers are more or less subject to their employers, and are not militant, you would not deem it a function of the Government to do anything toward making a change?

Mr. LEISERSON. Not a thing.

The CHAIRMAN. Although one ought to be made? You would wait for the employees themselves to make a change?

Mr. LEISERSON. Absolutely.

The CHAIRMAN. I thought you would agree with that.

Mr. LEISERSON. We have had, for example, many elections in which company-union employees have won the election. This Board of ours, as I take it, is this Board, as created under this bill represents the Government. And here is the important thing which seems to be overlooked both by Mr. Emery and the people he represents, and often by the labor organization—the A. F. of L—there is nothing in this bill or in the Railway Labor Act that gives any right to any labor organization. That right is to the employee.

Senator WAGNER. I have repeated that so often I am tired of saying it.

Mr. LEISERSON. The right is to the employee. They have the right. And if they want to choose a labor organization of one kind or another, that is their business.

The CHAIRMAN. It seems to be almost impossible to eradicate that thought.

Mr. LEISERSON. Under the Railway Labor Act as a board we find a good deal of difficulty. We have organizations, both company-union organization and others, who write to us and say, "Have we not a right to this or that under the law?" We tell them, "You have no rights under this Railway Labor Act when it comes to representation. The right is in the employee. When they choose you then you can represent them."

When we have an election sometimes the company union is whipped, and sometimes the other unions are whipped. Sometimes there are factions within the union. We even have elections by the different organizations that belong to the A. F. of L.

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We have, for instance, the firemen's organization of the locomotive engineers' organization. Both take in both firemen and engineers. And both claim jurisdiction. We tell them, "What you like is not important. We want to know what the men that work on the engines want." And so we have votes as between the firemen and the engineers, both which are natural labor organizations. Many of our cases are of that character. Now, the one that loses, whether it is the company or another kind of union, often kicks. And we tell them, "The trouble with you is that you blame the voting instead of going out and doing your education work. The employees have to choose. If you can convince a majority that they ought to be with you, why they will be with you. The other fellows convince them." That same answer must be given with respect to company unions, provided the whole weight of the employer's economic power of firing, discharge, and discrimination is not on the company-union side. The moment you have that there cannot be any lever to work itself out.

The CHAIRMAN. What is the financial provision in your law? How does it work out?

Mr. LEISERSON. In our law it says that no company shall use its funds directly or indirectly to support any labor organization. And I must say since my connection with this bill we have not found——

The CHAIRMAN (interposing). That would prevent the check-off system in the coal mines.

Mr. LEISERSON. Our law prohibits the check-off system. In fact, we are in court now. The Chicago, Rock Island railroad notified its company union that they can no longer check off the company-union dues. And the company union is suing the railroad company and the district attorney. We do not have anything to do directly with law enforcement, such as enforcing the Railroad Labor Act. Those that think they have a contractual right to have the company deduct their dues can have the check off for them.

I think I have made all the points that I have to make, if you bear in mind the difference between representation disputes, as they are altogether different kinds, and the difference between enforcing the rights of the employees to organize and the mediation of labor disputes, I think most of these arguments clear themselves up. Once we have these different distinctions in mind, if the problem is to enforce the right of the employee to be in an association the employer has no business there. If it is a dispute between an employee and employer over the terms or wages he has.

You take the provisions with respect to the prohibition of strikes that Mr. Emery mentioned. In the Railway Labor Act 30 days' notice is required for a change, and we go through a long procedure before it ever comes to our board.

We have called their attention to section 6 of our law that while we are negotiating you must maintain the status quo. But what the law says is that the carrier shall not change terms of employment, wages, and hours during that period.

If the issue was that the carrier fired a lot of people for belonging to a union, there is nothing in the law to prohibit them from striking on that issue, because there is no question of changing terms of employment there. It is just a question of enforcing their rights.

The CHAIRMAN. Against unfair practices?

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Mr. LEISERSON. Yes; against unfair practices. And I may say my experience on the National Labor Board was this: Where the issue was wages and hours we could settle it by mediation, we could get them to agree to arbitration with a little less difficulty. But most of the strikes came because the issue was the employer associated himself and fortified his weak position. The employee is not a business negotiator. He does not know how to strike a bargain. Again, he especially is against a highly trained buyer of labor. He wants to associate himself in a group of his own choosing. And the issue is, the moment he finds such a fellow, a man who can talk English a little better, with a little more courage, that fellow is fired out, the only thing left for the employees is to strike.

It would take 3 years to get it all through the court and therefore the railroad labor act does not prohibit a strike of that kind. Fortunately they do not have to have them, because the railroad management has learned their lesson in strikes 30 years ago.

In the other industries you still need them.

As I see the vice of these unfair practices the board following the analysis of the Federal Trade Commission, it is to make it possible for employees not to have to strike, to enforce their rights.

If you permit the employer to hire high-powered salesmen to interfere and influence their rights, what right have you to say to the employees that they shall not strike.

But, if you say here, we will have a board that will look into it any time you have a complaint of this kind and we will see that the right Congress gave you is enforced, and we will issue an order for it, then the board can say you do not have to strike, the same as our board recently said to a railway out in southern California. A group of their employees of all of the crafts had voted to strike and they had a right to strike, because they had gone through all of the conferences. We said to them, for Heaven's sake don't strike, let us go in, and we can do something with them. We went in and settled it for them. However, if we could not do anything for them, what right would we have to say, do not strike, especially as it is the fundamental constitutional right of association with fellow employees which the employer insists that he has—that he has the right to associate himself with his fellow employers and the labor man not to interfere with his rights.

Always, if we have in mind what is collective bargaining and what is a labor dispute, and what is a representation dispute we will not get into trouble on this.

I would like to say in conclusion that this railway labor act represents the wisdom of 40 years' experience. It has in it everything that this bill provides and something more. What I cannot understand, what perhaps a little more academic person would, that we have had 40 years' experience in handling labor disputes in order to maintain peace and everybody agrees, the carriers and the employees and the public that the railway labor act since 1926 has been very successful in maintaining peace for both the carriers and the employees who came to Congress and asked that the old railway labor board be abolished, and said let us have this kind of a law.

The Labor Board was abolished for many reasons, but one of the reasons I would like to point is that they had to fix up mediations

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of labor disputes with law enforcement since that time. Now, under the railway labor act, those things are made clear.

When Congress enacted section 7 (a) for other interstate industries—and I do not care to go into what is interstate and what is not, because I cannot qualify on that—it seems to me that Congress has established in the railway labor act on the basis of experience what the right is to organize and the right to bargain collectively. It cannot be different from what it is in section 7 (a). This lays down the rules to prevent interference, because it was found necessary to do that.

Now, why should we have this effort in these other industries, trying to discover America all over again, and go through the same fight and strife that the railroads went through 30 years ago? Why not begin with our wisdom which we learned from bitter experience, to come where we are now on the Railway Labor Act, and adopt that policy for other interstate industries. The arguments for this, it seems to me, is we are taking Congress' own policy, upheld by the courts, giving the reason for upholding it, but you need to maintain peace, and you cannot interfere with the constitutional rights of employees to associate themselves. This bill proposes to build on that experience and make up the policy to the other realization.

The opponents of the bill would have you go through the same kind of strife that we have had to go through on the railroads, and maybe 30 years from now get to where we have already learned to get.

It seems to me it is just a part of ordinary common sense to adopt the policy that has been found necessary as the result of experience and is embodied in this Senate bill.

The CHAIRMAN. Thank you, Mr. Leiserson, for your lucid explanation.

Senator WAGNER. I would like to ask a question when you have finished, Mr. Chairman.

The CHAIRMAN. Mr. Leiserson, I would like for you to furnish for the record a copy of the railroad law, and I would also like to have you give us a brief synopsis of the law.

Mr. LEISERSON. I have here a copy of the law, and I would be glad to prepare the synopsis for you.

The CHAIRMAN. I would also like to have, if it would not trouble you too far, to ask you to furnish us a comparison of this railroad law with the proposed law.

Mr. LEISERSON. I will be glad to prepare it.

Senator WAGNER. Doctor, I was not fully clear on this point. You discussed the separation of conciliation and mediation enforcement in connection with unfair labor practices. Is it your view that this board created under this act shall have control of unfair labor practices from the time the complaint is made to the time a decision is rendered?

Mr. LEISERSON. Absolutely, and that is very important. When we get a complaint from an employee or a group of employees, or from a labor organization that they have been discriminated against in violation of the law, as I just today had occasion to do, to write a letter to this effect to this man. I told them in this letter I referred to today, that this board is not authorized to hear such complaints, and I refer them to the proper procedure to go through.

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On the other hand, the moment it has to do with accusing the representatives, or a mediation case, then we must handle it right from the very beginning; and so, if this board is to handle enforcement of the right to organize, the moment that is questioned in any way the employee must be in a position to write to the board making a complaint and the board must be in a position through its agents, examiners, or whatever they are called, to investigate that dispute right from the beginning.

One of the mistakes made in the original labor board was that they tried to mediate a violation of the law. I think that was due to the composition of the board, not to the chairman of the board, because we had 6 employer representatives and 6 employee representatives, and question arose: Was there a violation of the law or not; was this man discriminated against or was he fired for abusing the membership, or did the employer interfere?

Instead of finding the fact of whether there was or was not a violation of the law and proceeding accordingly, they sat around and mediated and conciliated that question, maybe it was not so much of a violation, or maybe it was more, and they tried to handle it in a way which is perfectly proper to handle when the employees want 42 cents and the employer wants to give 36 cents, when you get together and try to compromise it, but to compromise the law itself is an absurdity.

The CHAIRMAN. Of course, the absence of power being vested in that board was directly responsible for that situation.

Mr. LEISERSON. Probably that also was an important reason, but it was also a mistake, because it made things worse and brought a strike on, so that any kind of violation right from the beginning on unfair labor practices must be in the hands of this board, and must not get into conciliation.

Senator WAGNER. Talking about strikes, do you not recall that in most cases where strikes occurred, they occurred because the employer refused absolutely to either deal with the representatives or permit elections to be held to choose representatives for the workers?

You recall that very well?

Mr. LEISERSON. Yes; and that is why most of these strikes came about.

Senator WAGNER. That is quite correct.

Mr. LEISERSON. Yes.

The CHAIRMAN. We thank you very much, Mr. Leiserson, for your very lucid explanation.

Senator WAGNER. Mr. Chairman, I might take advantage of this opportunity to put into the record two or three sentences from the magazine America, which I think everybody admits is one of the best-edited magazines, and this is right along the line of what we have just been talking about.

The CHAIRMAN. Certainly, you may do so.

Senator WAGNER. This magazine says:

> Will it share the fate of the bill introduced by Senator Wagner last year? If it does, then the high hopes entertained by labor are at an end, as far as Congress is concerned. Labor will then be compelled to fight for its rights by a series of strikes.

The CHAIRMAN. The hearings are now adjourned.

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DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, April 3, 1935.

Hon. DAVID I. WALSH,
United States Senate, Washington, D. C.

MY DEAR SENATOR WALSH: During the course of my testimony before the House committee on H. R. 6288, the House equivalent of S. 1958, "a bill to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes", I spoke at somewhat greater length than I did before the Senate committee on the reasons why the National Labor Relations Board should be made a part of the Department of Labor rather than established as a separate agency.

Since I believe that you may be interested in my argument on this point, I am enclosing a copy of my remarks, and I draw your particular attention to the marked portion on pages 3, 4, and 5.

Very truly yours,

FRANCES PERKINS.

TESTIMONY OF SECRETARY OF LABOR, HON. FRANCES PERKINS, BEFORE THE HOUSE COMMITTEE ON LABOR CONDUCTING HEARINGS ON WAGNER-CONNERY BILL TO ESTABLISH A NATIONAL LABOR RELATIONS BOARD

The bill which is before your committee has three principal objectives: First, to clarify and make a part of the general law section 7 (a) of the National Industrial Recovery Act; second, to create a National Labor Relations Board to hold elections to determine who or what organization shall represent employees for the purpose of collective bargaining and to prevent certain enumerated unfair labor practices; and, third, to provide for machinery by which the orders of the Board may, if necessary, be enforced in court.

I

Section 7 (a) of the N. I. R. A. does not represent an entirely novel contribution to American law. For many years its principles have been recognized and have found utterance in various Federal laws. Without attempting to review all such legislation it is enough to remind you of the Railway Labor Act, the amendments to the Bankruptcy Act, and the act establishing the post of Federal Coordinator of Transportation.

But though the principle is not new, the details are perhaps not yet clearly understood by the country as a whole. This is due in part to the fact that the meaning of the statute has so far had to depend upon administrative interpretations in isolated, and not always accessible, cases. For almost 2 years now administrative boards have been hammering out the details in a number of separate decisions which, it seems to me, Congress should review and piece together in a single pattern. By doing this Congress will make it obvious to employers, workers, Government officials, and the courts just what the law was intended to mean and how far Congress accepts, and how far it rejects, prior administrative interpretations.

This procedure of congressional clarification will have a twofold effect, I hope: First, it will make for better cooperation between the public and the Government; for most people, employers and workers alike, will cooperate as soon as they understand the rules of the game; second, it will improve the chance of the Government winning its cases in court, for the judges will then realize that the interpretation which is being presented in court is the interpretation of Congress as well as of the executive branch of the Government.

I am not going to analyze every aspect of this clarification, as it is worked out in the bill before you, but I am going to stress three points and then pass on to other matters:

(1) The bill is applicable to every employer whose business is in or affects interstate commerce and not merely to such employers as are subject to N. R. A. codes. In one of its recent decisions the National Labor Relations Board decided that employers who are not subject to codes are not subject to section 7 (a), and this result, though probably necessary under the present statute, seems to me unwise, and ought to be overruled. It seems to me that if the principle of section 7 (a) is sound (as I believe it is) the benefits of that

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section should extend to those who work for any employer subject to Federal jurisdiction.

(2) The bill adopts the principle of majority rule. To this committee I need hardly explain the meaning and purpose of that rule. The rule is intended to prevent an employer from making one agreement with one group of his workers, and another agreement at different rates of pay, and so forth, with another group of his workers who perform the same sort of labor. It is a rule also intended to prevent an employer from playing off one group of workers against another, to the detriment of both, and with the object of creating dissension rather than collective agreement. Majority rule has been a principle adopted by the old War Labor Board, the Wagner Labor Board, the National Labor Relations Board, the President in Executive orders creating the Steel and Textile Boards, and Congress itself in passing the Railway Labor Act. Even employers, in formulating a program for their own code making, have urged N. R. A. to adopt for them the principle of majority rule; and it can hardly be supposed that they would not want the same principle applied to their workers, particularly when our whole system, economic as well as political, is bottomed upon this rule.

(3) The bill establishes four so-called "unfair" practices. I am in favor of taking these or other appropriate steps to eliminate all discrimination directed against a worker because he joins a union. A worker should be free to join any organization of his choice; and there should be outlawed every form of coercion, interference, intimidation, or discrimination aimed at that freedom. In cases in which he exercises coercion or interference through a company union, an employer violates the intent of section 7 (a), and I am glad to note that such violation is directly forbidden in this bill.

In addition to clarifying section 7 (a), the bill before you is designed to create on a more permanent statutory basis the National Labor Relations Board.

As you no doubt remember, shortly after the National Industrial Recovery Act was passed, the President appointed a National Labor Board under the chairmanship of Senator Wagner to deal with the problems involved in section 7 (a). This Board continued to function until last year the Seventy-third Congress passed Public Resolution No. 44, which authorized the President to establish such board or boards as he deemed proper to handle elections and to investigate labor disputes and practices of employers and employees. Pursuant to the authority conferred in this resolution, the President established five different boards: The National Labor Relations Board, the Steel Labor Relations Board, the Textile Labor Relations Board, the Board of Inquiry for the Cotton Textile Industry, and the National Longshoremen's Labor Board (the last two of which, having completed their work, have now been dissolved).

We have learned from the experience of these boards enough, I believe, to justify us in establishing the National Labor Relations Board upon an enduring basis.

It is clear, of course, that any such Board, in order to render impartial decisions, bust have judicial independence, and I thoroughly agree that its decisions should not be reviewed by any person in the executive branch of the Government. If the Board makes errors, those errors will be subject to correction in the courts of the land, but they should not be in any way subject to administrative supervision.

But although I believe that the Board ought to be free to make whatever decisions it believes that the facts justify, I do no favor setting up the Board as an entirely separate agency disassociated from all the permanent executive departments.

The National Labor Relations Board, it seems to me, should be made a part of the Department of Labor, and its employees, while selected in the first place by the members of the Board, should not be appointed until they are approved by the Secretary of Labor.

Employer-employee relations and the problems of collective bargaining belong within the normal sphere of a labor department. This is recognized in our various State labor departments and in the ministries of labor in foreign countries. Indeed, it is difficult to imagine problems which are of greater importance in the labor field. And unless the agency which deals with these problems is part of the Labor Department, there is danger that there will not be that constant integration of these problems with other labor problems, which is essential if the Department and the Board are to have the greatest possible understanding of the ramifications of their decisions and the greatest possible effectiveness.

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Although in theory this cooperation and integration might exist if the Board were separated from the Department, I do not believe it would work out in actual practice.

I am sure that the members of this committee have watched the growth of Government with sufficient care to note that once an agency is established as an entirely separate organ in the executive branch of the Government, that agency, or at least many people who are connected with it, are always trying to increase its functions, gain for it a wider jurisdiction, and stress its importance to the Government. Thus a separate labor board, in spite of any restrictions that might be formally laid down, might and probably would engage in conciliation and research. This would mean an unnecessary duplication of functions already performed by the Department.

But there is something even more serious and more subtle than the increased expense which results from establishing a separate agency of Government in the labor field. The employees of such an agency will be so anxious to build it up and justify it in the public mind that they will concentrate on educational and administrative activities rather than on the decision of the specific cases brought before them. We all know that one of the reasons that courts accomplish their duties so well is because they ignore the work of propaganda and administration and devote themselves to a quiet, unimpassioned and uninterrupted performance of the task of deciding just those controversies which are brought before them. And anyone who is really interested in making the proposed Labor Board judicial and as much as possible like a court should favor confining the Board to the decision of cases and the holding of elections and should not encourage it to enter the disconcerting task of administration.

Moreover, if the Labor Board is made a separate agency it will make it more difficult for the general public to understand the set-up of our governmental machinery. An increase in governmental bureaus produce in the public mind increases confusion; whereas there is nothing that promotes justice and efficiency in Government more than a simple administrative structure.

And the advantages of a simplified administrative structure are apparent in the Government as well as outside of it. The problems of the Labor Board ought to be brought periodically to the attention of the President and the members of the Cabinet. This is hardly likely to be achieved unless the Board is made part of a permanent department. If the Board is separate, and carries on only judicial functions there would be no running to the Chief Executive and the heads of executive departments. There is no meeting of judicial as well as administrative officers which could consider the Board's problems and difficulties.

I urge that this point be most seriously considered by your committee for I am anxious that the work of the Board should have a place in the regular thinking of the administration, and I know no way that that can be accomplished if the Board is set off apart from all the Departments. And I fear that separation will mean that the board and the problems of collective bargaining will enter into the minds of most of us only in times of crisis, and will mean that our ignorance and detachment leave us unprepared to cooperate and to assist.

There is one final matter that this pending bill covers. It provides the means by which the findings and orders of the proposed National Labor Relations Board can be enforced in court. One of the weaknesses of the present structure is that the Labor Board's findings have no standing as evidence in court, and a case once brought to court has to be begun de novo. This is a weakness for which we have developed a remedy in other fields.

Congress has provided that certain agencies in the executive branch of the Government shall have the right to compel persons to produce evidence, to make findings and orders based thereon, and then to have such orders enforced in court if the court holds that the findings and orders were based upon evidence. Examples of agencies having such powers are the Interstate Commerce Commission, the Federal Trade Commission, the Securities and Exchange Commission, the Communications Commission, the Secretary of Agriculture in the administration of the Packers and Stockyards Act, and the Secretary of Labor in the administration of the immigration laws.

The present bill gives to the Labor Board the same sort of powers that these agencies have always exercised, and it strikes me that anyone who studies our administrative law will readily concede that the Connery-Wagner bill is built upon sound precedent. And, indeed, the flexibility and promptness of this sort of administrative procedure is particularly important in the field

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of labor relations, where justice to both workers and employers consists not merely in a correct but also in a quick decision.

I hope that this bill will pass, and that under the machinery it provides, the rights to which we all believe the workers are entitled can be more effectively realized.

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CONGRESSIONAL RECORD, SENATE—APRIL 15, 1935
(79 Cong. Rec. 5626)

LABOR DISPUTES AND THE FEDERAL GOVERNMENT

Mr. LOGAN. Mr. President, I ask unanimous consent to have printed in the RECORD an article which appeared in the American Bar Association Journal for April 1935, entitled "Labor Disputes and the Federal Government", by O. R. McGuire, member of the Bar Association's committee on administrative law.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

LABOR DISPUTES AND THE FEDERAL GOVERNMENT

PERSISTENCE OF EFFORTS TO BRING INTRASTATE LABOR RELATIONS UNDER FEDERAL CONTROL MAY EVENTUALLY RESULT IN PROPOSAL OF A CONSTITUTIONAL AMENDMENT TO AUTHORIZE IT—IT IS THEREFORE DESIRABLE TO CONSIDER THE WORKINGS OF SUCH A PLAN IN THE FEDERATED DEMOCRATIC GOVERNMENT OF AUSTRALIA, WHERE A SYSTEM OF COMPULSORY REGULATION AND DECISION OF LABOR DISPUTES HAS LONG BEEN IN OPERATION

(By O. R. McGuire, member of American Bar Association's Committee on Administrative Law)

The Constitution of the United States, as it now exists, leaves little room foe doubt that the Federal Government does not possess the power to prescribe thhours of labor, maximum or minimum wages, or terms and conditions of employr ment in intrastate business or industry nor may the Federal Government insist that there shall be followed any system of compulsory arbitration of such intrastate disputes. If previous opinions of the Supreme Court of the United States are to be accepted as establishing the law of the Constitution in this respect, it seems equally clear that manufacturing, farming and the bulk of other industries employing labor are intrastate in character.

However, the persistence with which efforts are being made to bring such intrastate labor relations under Federal control through the enactment of various statutes by the Congress may eventually culminate in a proposed constitutional amendment after the Supreme Court of the United States finally sustains the judgments of the lower courts holding unconstitutional or inapplicable Federal statutes attempting to regulate the relations of employer and employee in intrastate business or industry. Therefore, it not only appears appropriate but highly desirable to take a glance at the laws of another federated democratic government—the Commonwealth of Australia—where there has been long in operation a system of compulsory regulation and decision of labor disputes.

At the federal convention, which was held in Sydney in 1891 to discuss the proposed legislative powers to be conferred on the Commonwealth government, Mr. C. C. Kingston proposed that the Commonwealth Parliament should have power to establish courts of conciliation and arbitration for the settlement of industrial disputes. It was made quite clear in the official report of the debates in this convention that it was the intention of such proposal that industrial disputes confined to one State were to be left to the State concerned for settlement but nevertheless the proposal was defeated. Six years later the proposal was again advanced in the federal convention held at Adelaide, in 1897, when Dr. Higgins, later Justice Higgins, of the federal industrial court, proposed that the federal government should have power to deal with industrial disputes extending beyond the limits of any one State. He urged that industrial disputes could not always be confined in their evil effects to any one State and that when not so confined the Commonwealth government was the only government which could

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cope with them. The proposal was again defeated, but he advanced it the next year in the convention held at Melbourne, and this time with success, for it was incorporated in the Commonwealth constitution as section 51, paragraph 35, as follows:

"The parliament shall, subject to the constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State."

This federal constitutional provision was implemented by the Commonwealth conciliation and arbitration act of 1904, which has been several times amended. The chief objects of the act are set forth in section 2 thereof as being to prevent lockouts and strikes, to constitute a court of conciliation and arbitration, to provide for the exercise of the jurisdiction of the court by conciliation and compulsory arbitration in default of amicable agreement between employer and employees; to enable the states of the Australian Commonwealth to refer labor disputes to the Commonwealth court, to facilitate and encourage the organization of representative bodies of employers and employees, and to provide for the making and enforcing of industrial agreements.

Section 11 of this act of 1904 provided that the Commonwealth court of conciliation and arbitration should be a court of record, and section 12 provided that the president should be appointed by the Governor General of the Commonwealth from among the justices of the high court, the supreme court of the Commonwealth government, for a term of 7 years. Subsequently the high court held in the case of *Waterside Workers' Federation of Australia* v. *Alexander, Ltd.*, 25 C. L. R., 434, that since the Commonwealth constitution provided in section 72 that justices of the courts created by the Commonwealth Parliament should hold office for life and the justice of the Commonwealth arbitration court was appointed for a term of 7 years only, such court was incompetent to exercise any judicial power. The result thereof was an amendment of 1926 which provided that the judges of the Commonwealth arbitration court should be appointed for life. A prior act of 1920 had changed the title of the presiding judge from president to chief judge with authority in the Governor General to appoint such additional judges as might be required. Only barristers or solicitors of the high court or of the supreme court of a State of not less than 5 years' standing are eligible for appointment to the Commonwealth arbitration court. Since the 1926 amendment that court has freely exercised judicial powers such as the imposition of penalties for breaches of awards, the interpretation of awards, and the issuance of injunctions or prohibitions.

The States of the Australian Commonwealth likewise have their industrial courts. The wage board system was introduced in Victoria in 1895, and the powers and jurisdiction thereof was greatly enlarged in Victoria Act 3677 of 1928. Tasmania had a wages board act in 1910. South Australia, New South Wales, and Western Australia each had an industrial arbtiration act in 1912. Queensland had an industrial peace act in 1912, and an industrial arbitration act in 1916. The organization of the industrial tribunals vary somewhat as among the various States of the Australian Commonwealth, and it would unduly extend the length of this paper to describe all of them in detail. The one in New South Wales, which is the principal industrial State in the Commonwealth, may be accepted as an illustration of similar organizations in the other States.

The Industrial Commission of New South Wales consists of three members, one of whom is called the president. A person to be qualified for appointment to that commission must be a puisne judge of the supreme court, a district court judge, a barrister of not less than 5 years' standing, or a solicitor of not less than 7 years' standing. Appointments are made by the governor. Each member has all the rights of a puisne judge of the supreme court of the State. The commission is a superior court of record, and the retiring age of the judges is 70 years. All members must be present at a sitting and decisions are reached by a majority vote. The commission may in a particular matter delegate any of its powers or functions to any one member or to a deputy commissioner appointed by the governor. Appeals lie to the commission from any order of a commissioner or deputy commissioner and the commission may vary such order or award in such manner as it thinks just. The commission may sit with assessors representing the interests of each of the parties before it and may commit to such assessors for determination or consideration and report any issue of fact.

This commission of New South Wales includes among its powers and functions the right to inquire into and determine any industrial matter referred to it by the

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minister of the State; to hear appeals from any order, determination, or award of a conciliator whose principal work is the making of awards and variations of awards in labor disputes; to determine, after public inquiry, but not more frequently than once in every 6 months, a standard of living, and to declare what shall be the living wages based upon such standard for adult male and adult female employees in the State; to hear and determine appeals under the act; to confer with any persons or industrial unions as to anything affecting the settlement of an industrial matter; and to summon any person before the commission for the purpose of giving evidence. Also, the commission has power to encourage the proper apprenticeship of minors and to provide for the welfare of juveniles in industry; to acquire and disseminate knowledge on all matters connected with industrial relationship between employers and workers, and to combat the evils of unemployment; to propound schemes for welfare work; to report on prices of commodities, monopolies, trade rings, etc.; to report upon the productivity of industries; to consider and report upon the industrial efficiency of the community; to collect and publish from time to time statistics of vital, social, and industrial matters; and to encourage and assist in the establishment in different industries of mutual welfare committees and industrial councils.

Under the statute any decision of the commission is made final and no award, order, or proceeding of the commission can be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, quashed, reviewed, or called into question by any court of judicature on any account whatsoever. Also, under the statute, inspectors are appointed who may at any reasonable time inspect any premises and any work being done therein; call for and examine time sheets and pay rolls of employees; and examine any employee in regard to wages and hours of labor; and the inspectors are required to report to the minister of the State all breaches of the Factories and Shop Act of 1928 or of any award or industrial agreement which may come to the attention of such inspectors.

That is to say, we find in Australia that the Commonwealth government, functioning under a Federal constitutional provision, hereinbefore quoted, has established and endowed a Commonwealth arbitration court, appointed for life, with vast powers for the settlement of industrial labor disputes extending beyond the limits of any one State, and the various State governments have established and endowed arbitration courts under various names for the settlement of labor disputes within the respective States. In other words, Australia has a complete system of Federal and State arbitration courts with jurisdiction far beyond anything [5627] heretofore attempted in this country—even beyond the legislation held unconstitutional in *Coppage* v. *Kansas* (236 U. S. 14), and *Atkins* v. *Childrens' Hospital* (261 U. S. 525).

What have been the results in Australia?

The Adelaide Chamber of Commerce Bulletin for February 1934 contains the statement that the position of industrial arbitration in Australia justified the remark of the late Mr. Justice Higgins—the man who succeeded in securing power in the Commonwealth Constitution to establish a Federal arbitration court—with reference to the "Serbonian bog of technicalities"; that there were Federal and State awards which overlap; that the bases of the different awards vary in different industries on varying costs of living figures computed on different bases; that the interpretation of the Federal Constitution and Commonwealth legislation thereunder—which overrode State legislation—had changed so as to give the greatest operation to the Commonwealth constitution and laws; and that the word "dispute" had been stretched to include cases where the mere exchange of correspondence between employers and a union has been held to constitute a dispute.

The British economic mission in its report of January 7, 1929, to the prime minister of the Commonwealth government stated, among other things, that it had consulted with employers and employees and that it was the consensus of opinion that the arbitration courts had not come up to expectations. Also:

"By workmen's representatives, not less emphatically than by representatives of the employers, it has been consistently represented to us that the arbitration courts are not achieving their purpose and that a system designed to arrive by judicial decisions at fair and prompt settlement of industrial disputes such as could be freely accepted by both sides must be held to have failed. The most important of the reasons which have been advanced for this view are that experience has shown that there arises between the two parties who appear before the arbitration court judge or arbitrator the spirit of antagonism inseparable from

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litigation, and that the object of prompt settlement is defeated by the delay occasioned by the necessity for the collection and presentation of detailed evidence in a form acceptable to a court. It is complained that the procedure of the arbitration tribunals occasions the expenditure of much time and money by the litigants, and involves very long absences from their ordinary occupations for a large number of persons whose time might be more profitably employed that the subject matter of the questions which are brought before such tribunals is not of a nature with which judicial tribunals, necessarily unversed in the practical problems of industry or in the economic questions to which they give rise, are best fitted to deal; and that the overlapping jurisdiction of the federal and State arbitration courts have led to an almost inextricable tangle of conflicting decision so complicated that large staffs have to be maintained to keep track of them and to endeavor to guard against involuntary contravention of any of them in the course of everyday business. The indictment of the system of the arbitration courts which we have heard is a heavy one; and we feel that it is well founded on many grounds, and particularly on the ground that the system has tended to consolidate employers and employees into two opposing camps, and has lessened the inducement to either side to resort to round-table conferences for that frank and confidential discussion of difficulties in the light of mutual understanding and sympathy which is the best means of arriving at a fair and workable industrial agreements.

"A change in the method prevalent in Australia of dealing with industrial disputes appears to us to be essential, and we hold that there should be a minimum of judicial and governmental interference in them except insofar as matters affecting the health and safety of persons engaged in industry may be concerned."

The foregoing is the opinion of a British ecomomic mission sent out to Australia to make a report respecting the very serious economic and industrial situation then confronting the people of Australia and is thus the judgment of a group of experts wholly detached from the political conditions in that Commonwealth.

With respect to conflicts between the Commonwealth and State arbitration courts, the opinion of the supreme or high court of the Commonwealth government in *Whybrow's case* (10 C. L. R. 266), placed the unions in a happy position. That opinion was to the effect that the federal arbitration court could fix a rate of wages higher than the rate fixed by the applicable State arbitration court with the result that the employees could try their luck with the federal court with the knowledge that the State rate of wages and conditions of work could not be reduced or made worse and might possibly be increased or bettered. In other words, where both a federal and a State award or determination of wages and working conditions operate in the one industry the employees are entitled to the higher wages and better working conditions in whichever award they are prescribed. In a subsequent case of *Clyde Engineering Co., Ltd.*, v. *Cowburn* (37 C. L. R. 462), the high court held that the State legislatures could not fix or authorize the State arbitration courts to fix a rate of wages or prescribe working conditions inconsistent with those fixed and prescribed in the award of the federal arbitration court.

A result of such a conclusion of the high court is stated in the above-referred-to bulletin of the Adelaide Chamber of Commerce with respect to rates of wages fixed by the federal arbitration court in a recent textile award. That award prescribed a flat rate of pay for all woolen mills, throughout the Commonwealth. Prior to that time the rates of wages in such mills had been fixed in the various States on the basis of the different costs of living in such States, but due to an allegation that such industry was highly competitive, it was concluded to make the rate of wages uniform. The chamber said:

"Such an award is based upon entirely wrong premises, and unfortunately the employers in the smaller States concerned in endeavoring to obtain exemption, had to fight not only the union leaders, but also the lawyers of employers of the eastern States. Industry in the smaller States cannot long continue to stand up to the competition of manufacturers in the more populous States who have the benefit of a large home market."

The labor unions make no secret of the fact that they prefer the federal arbitration court to the State courts or boards. The vice president of the Australian council of trade unions (representing some 500,000 workers) is reported to have testified on March 19, 1928, before the royal commission on the Commonwealth constitution that he considered it was essential that the federal parliament should be given unrestricted power to deal with the problems of capital and labor throughout the country, whether interstate or intrastate in character and that to allow

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13 differently constituted legislative bodies to deal with the problem in piecemeal was only courting disaster. On the other hand, Justice Brown said in the *South Australian Living Wage case for the Tinsmiths* (1 S. A. I. R. 55), that:

"Most industries in south Australia, however, as in other States, are domestic industries which call for, and should receive, domestic supervision. With regard to such industries, the proximity of the court, with its relative accessibility, and the relative ease with which it is subjected to criticism through one or the other of the various organs of public opinion, make it a more truly democratic tribunal than a centralized tribunal can claim to be, however generous might be its awards. Further, the fact that the local tribunal is more nearly in touch with local industries also serves to justify the maintenance of State industrial control alongside of the federal system. There is a great sphere of useful service for both. But if the public interest is to be served, there should be no marked divergency between the Commonwealth and State authorities as regards such basic matters as the living wage. I hope the time is not far distant when some arrangement will be made, formal or informal, for coordinate action."

While the struggle in Australia seems to be not unlike the struggle in this country between Federal and State rights, the Commonwealth government has been unable to secure the adoption of an amendment to the federal constitution authorizing the federal government to take over the control of labor conditions in purely State matters where such control has not been effected by virtue of the two above referred to judgments of the federal high court in the Whybrow and Clyde Engineering Co. cases. Such control over intrastate wages, hours of labor, etc., is very substantial as shown by the award of the federal arbitration court in the above referred to woolen manufacturing case.

Has such a scheme of arbitration of industrial courts brought about industrial peace in Australia? The answer is decidedly not. The Labor Report for 1932, issued by the Commonwealth bureau of census and statistics at Canberra states that the working days lost during 1932, due to industrial disputes, aggregated 212,318, and during 1931 aggregated 245,991 days. The estimated loss of wages during 1932, due to such industrial disputes, aggregated £165,582, and for 1931, the sum of £227,731. The number of industrial disputes in 1932 was 127, and the number in 1931 was 134, and in 1932, 32,917 people out of the comparatively small population of 5,435,734 in Australia were engaged in industrial disputes for that year. During the 5-year period from 1928 to 1932, inclusive, the said labor report is to the effect that an aggregate of 119,562 persons were engaged in labor disputes with a loss of 7,208,306 working days and £7,330,319 in wages. It is stated by the same authority that the main causes of industrial disputes in Australia are wage questions, working conditions, and employment "of particular classes of persons."

It is thus clear that the arbitration courts have not succeeded in Australia—with all of their vast power to either prevent or settle industrial disputes—and this seems to be due in some measure, at least, to the fact that while an award may be enforced against the employer by fines, such remedy is ineffective against the labor unions when they refuse to accept an award as satisfactory and the members either do not return to work or quit work. The high court held in the *Waterside Workers' case* (10 C. A. R. 429) that while an arbitration court may have fixed the minimum wages to be paid, the employees were under no obligation to accept employment at such wages. Even if the employer should succeed in securing a judgment against the union for violating an award by striking for higher wages, such judgments are often difficult if not impossible to collect.

Senator WAGNER introduced in the Senate of the United States on February 15, 1935 (S. 1958) to establish a National Labor Relations Board to be composed of three members which is to be authorized, among other things, "to prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce." It is interesting to compare the provisions of such bill which the laws of the Commonwealth of Australia and its States for the regulation of labor disputes. Assuming for purpose of argument that such a law could be sustained in this country, either without or with an amendment to the Constitution to that end, it is difficult to see what would be the situation in this country with a three judge court to hear industrial disputes. Australia has but a fraction of the population that we have in this country; in fact, the total population of Australia is less than the population of the State of New York and the industries of Australia are comparatively few. Yet, Mr. Charlton a labor leader **[5628]** in the Commonwealth House of Representatives, stated in a debate of June 8, 1928, that:

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"The principal trouble in connection with the arbitration court has been caused by the delays in getting claims heard. Some industrial organizations have had to wait for 18 months or 2 years before their claims have been brought before the court; the excuse offered for this state of affairs being that there are not sufficient judges to cope with the work."

Senator Barnes, another labor leader, stated in the Commonwealth Senate on June 12, 1928, that:

"As a result of years of experience in the trade-union movement, I believe that the greatest factor in fomenting industrial unrest is not a desire of the workers to be everlastingly on strike, but the fact that there is so much delay in having their cases heard by the arbitration court. * * * Unionists are prepared to obey the law, but they strongly resent the delays which occur in getting an award from the court."

The system of arbitration courts in Australia, with their power to fix wages and hours of labor for all industries, may be compared with the board of mediation, boards of adjustment, and boards of arbitration established in this country by the act of May 20, 1926 (44 Stat. 577, 587), at a cost of $125,564 to the Federal Treasury for the fiscal year 1935, to consider disputes between the interstate railroads and their employees. While there are many points of difference between the two systems, the principal one is that under the act of May 20, 1926, the matter is a voluntary one between the railroads and their employees, while in Australia it is compulsory, and would be so here in event S. 1958 became law and was sustained.

However, in connection with the power of the Federal Government to fix wages and hours of labor in intrastate industry, presumably through the medium of codes of fair competition or under some such provision as section 7 of the act of June 16, 1933 (48 Stat. 198), or the proposed Wagner labor-relations bill, Donald R. Richberg, executive director of the National Emergency Council, in a radio address of March 18, 1935, referred to *United States* v. *Brims* (272 U. S. 549); *Coronado Coal Co.* v. *United Mine Workers* (268 U. S. 295); and *Local 167* v. *United States* (291 U. S. 293), and said:

"The last stronghold of an irreconcilable opposition appears to lie in legalistic arguments over the powers of the Federal Government. Here again public opinion is confused by sound and fury emanating from the bench and bar, instead of light. When judges and lawyers loudly proclaim that the power of the Federal Government to regulate interstate commerce does not authorize the regulation or manufacturing and mining or trade within a State, they are not stating the law. They are simply dodging the law, and repudiating the express and repeated rulings of the Supreme Court of the United States. * * * The quibblers and evaders of the law should not be allowed to confuse opinion as to the power of the Federal Government to restrain unfair competition in business practices or in labor conditions for the protection of interstate commerce. There is no question of the power. There is only the question of how and where that power should be most widely exercised."

It seems to me that in this connection the history and achievements of the Australian Arbitration Courts of the Commonwealth government, as well as of the various states in that Commonwealth, should be carefully considered in this country.

CONGRESSIONAL RECORD, SENATE—APRIL 23, 1935

(79 Cong. Rec. 6183)

THE NATIONAL LABOR-RELATIONS BILL—ADDRESS BY SENATOR WAGNER

Mr. COSTIGAN. Mr. President, last Sunday evening, April 21, 1935, the junior Senator from New York [Mr. WAGNER] made over the radio a characteristic address, rich with feeling and strong with conviction, on the national labor-relations bill. On that subject the Senator from New York, the author of the bill, is an acknowledged expert. All Members of the Senate will undoubtedly wish to read his brief discussion, and I ask unanimous consent that the address may be printed in the Congressional Record.

There being no objection, the address was ordered to be printed in the Record, as follows:

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The depression fell with equal fury upon industry and labor. It robbed the business man of the hard-won earnings of a lifetime and it deprived the worker of the sacred right to earn his daily bread. This universal calamity impressed upon most thinking people the truth that employer and employee in the United States have mutual interests in the present and mutual aspirations for the future. Thus the program of leadership inaugurated 2 years ago was based upon the ideal of teamwork between an awakened industry and an enheartened labor.

This program saw from its beginning that disorganization had provided the nourishment for hard times. We realized that business had plunged into a wilderness of difficulties because of a blind and unchecked form of individualism, with each enterprise working at cross purposes, and with many of them cutting prices, slashing wages, and indulging in other unfair methods of competition. We realized also that employees, without any unifying influences to direct their efforts, were demoralizing standards by assenting to sweatshop conditions, thus knocking the props of purchasing power from beneath the structure of business. We came to the sound conclusion that everyone would profit by subordinating narrow and selfishly conceived interests to a Nation-wide plan for general revival. Cooperation was thus made the keynote of the recovery drive.

Insofar as business was concerned, the new strategy consisted largely in removing some of the outworn restrictions of the anti-trust laws. Employers have been allowed to cooperate among themselves to stabilize business operations by exchanging information and prohibiting unfair competitive methods. None can deny the benefits that have flowed as a result of these changes. Mounting profits and a more hopeful outlook are the major characteristics of the past 2 years generally and of the past 6 months in particular. Business has commenced to thrive under the new deal.

The second part of our program took note of the need for a broader and more sympathetic understanding between employers and employees, for if employers did not cooperate with their workers, as well as among themselves, they would be rewarded with strife rather than with peace and they would not receive the willing support and confidence upon which smooth industrial operations depend. In addition, the exile of labor from the councils of business would perpetuate the lag of wages behind profits, and [6184] in the end would drag the whole economic system back into the mire.

Now, it was perfectly obvious to every observer of modern large-scale enterprise that it would be impossible for employees individually to deal directly with their employers. One cannot imagine an isolated worker cooperating with the United States Steel Corporation. Nor can one imagine a single huge employer cooperating separately with each of 10,000 to 50,000 workers. Cooperation depends upon the free and untrammeled right of workers to organize for that purpose.

Thus the American battle for industrial liberty has been waged upon the issue whether workers shall be free to associate together if that is their desire. The first great victory was won when, after 7 years of frustration, Congress passed the Norris-LaGuardia Act. This act denied the help of the Federal courts for the enforcement of the "yellow dog" contract, that instrument of bondage which required as a condition of employment that a man promise not to affiliate with others of his kind.

But the elation of the friends of freedom was short-lived. Devious devices were used to defeat the objectives of the Norris-LaGuardia Act. Even without the "yellow dog" contract the unfair employer could discharge and discriminate against workers if they violated any dictate of his will. As a remedy the famous section 7 (a) was passed, forbidding any interference with the right of workers to organize for purposes of mutual advancement. No one who believes that the "yellow dog" contract is wrong could logically oppose section 7 (a).

The virtual collapse of section 7 (a) is a matter of common knowledge. The cause for this has been that a relatively small number of unfair employers have discriminated against and discharged employees who exercised their fundamental rights; have set up a masquerade type of union which is really the creature of the employer rather than the representative of the employee, and have taken advantage of the lack of adequate enforcement power behind section 7 (a) to defy the Government with brazen impudence.

The immediate result of shutting out employees from full participation in the recovery program has been to deny them their full share of the fruits of recovery. While profits have risen with gratifying regularity, reemployment has slowed down to a snail's pace, and we are still confronted by the horrible spectacle of

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eight to ten million people who search earnestly and hopelessly for some form of work. While minimum wage rates have been raised under the codes, a substantial part of this gain has been charged to wage earners in the upper brackets and to the vast consuming public in the form of inordinately high prices. If these conditions persist, it is only a question of time until the burden will be borne by business itself. The upswing of business cannot be maintained indefinitely unless there is a tremendous reduction in unemployment, a sustained rise in purchasing power, and a removal of the present industrial discontent based so largely upon a denial of legal as well as ethical rights.

It is to these ends that my national labor-relations bill is directed. From the date of its introduction this bill has been misconstrued and misrepresented by the opponents, both secret and avowed, of the principle of freedom for the man who works. The malicious falsehood has been widely circulated that the measure was designed to force men into unions, although the text provides in simple English prose that workers shall be absolutely free to belong or to refrain from belonging to any organization. Practically everyone has heard the charge that the bill imposes a closed shop and a union monopoly upon the whole United States, when in fact it does absolutely nothing to change in any State the existing law in regard to the closed shop. Millions of printed pamphlets, emanating from a few sources of prejudice or reaction, contain the concoction that the bill enlists the Government in favor of some particular kind of union. In truth the bill permits any worker not only to stay out of all unions if he so desires, but also to select any kind of organization that he prefers, either national or local, either craft or industrial, either federated or confined to the limits of one company. It does not subject him, however, to the menace of a pretended union that is dominated and bought by the employer. It makes the worker a free man. To cap the climax of deliberate misstatements, it has been asserted that my bill invests the National Labor Relations Board with arbitrary and dictatorial powers greater than those possessed by any court in the land. But when the hearings were held this month I publicly challenged everyone who made this criticism to show one substantial respect in which the bill went beyond the powers conferred upon similar administrative agencies, such as the Federal Trade Commission, the Interstate Commerce Commission, and a multitude of others. In no instance was my challenge answered, because there was no answer.

When rescued from the smoke of false issues that have been raised around it, the provisions and purposes of my bill are extremely clear and simple. It incorporates the principles of section 7 (a). It illegalizes the dummy union which is dominated by the employer. It provides for secret elections, supervised and conducted by the Government, where employees may choose representatives for collective bargaining under the American principle of majority rule. At the same time, even after the majority has acted in accord with democratic procedure, the right of minorities or individuals to confer and discuss grievances with their employer is preserved. Finally, the bill creates a permanent board of three members, appointed by the President by and with the advice and consent of the Senate. The power of this board to issue orders is strictly limited to the preservation of the industrial freedom guaranteed specifically by the bill. Moreover, every single order is reviewable in full by the Federal courts.

The passage of the national labor-relations bill will help every industry that wants peace and harmony. It will help every industry that believes that contented and decently treated workers are the richest materials any country can possess. It will help every industry that prefers a steady flow of temperate prosperity, rather than the hectic flush of fictitious prosperity followed by the deep gloom of returning depressions.

And in helping industry let us not forget that we shall help the worker also. Forty thousand American workers have borne the depression with heroic patience and fortitude. Those who did not actually lose their jobs were tormented, nevertheless, by the constant fear of insecurity and by the added burden of helpless relatives and friends. Even those at work have seen their children denied the elementary needs of food, clothing, and schooling. They have gone through the valley of despair for the future of their families. In trials of peace as in trials of war, the American workers have never broken faith with this country or its Government. They have been the backbone and the strength of the Nation. The time has come when our Government must recognize the deep extent of their devotion. We must not now repudiate the pledge that has been given them of emancipation from economic slavery and of an opportunity to walk the streets free men in fact as well as in name.

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Calendar No. 595

74TH CONGRESS
1ST SESSION

S. 1958

[Report No. 573]

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15 (calendar day, FEBRUARY 21), 1935

Mr. WAGNER introduced the following bill; which was read twice and referred to the Committee on Education and Labor

MAY 1 (calendar day, MAY 2), 1935

Reported by Mr. WALSH, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND DECLARATION OF POLICY

~~SECTION 1. Equality of bargaining power between employers and employees is not attained when the organization of employers in the corporate and other forms of owner-~~

~~ship association is not balanced by the free exercise by employees of the right to bargain collectively through representatives of their own choosing. Experience has proved that in the absence of such equality the resultant failure to maintain equilibrium between the rate of wages and the rate of industrial expansion impairs economic stability and aggravates recurrent depressions, with consequent detriment to the general welfare and to the free flow of commerce. Denials of the right to bargain collectively lead also to strikes and other manifestations of economic strife, which create further obstacles to the free flow of commerce.~~

SECTION 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of ownership

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and out of numerous other modern industrial conditions, impairs and affects commerce by creating variations and instability in wage rates and working conditions within and between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity between production and consumption, reducing the amount of commerce, and tending to produce and aggravate recurrent business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.

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The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial unrest which burden and affect commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway

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Labor Act, as amended from time to time, or any labor organization (*other than when acting as an employer*), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor

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dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, ~~or~~ hours of employment, *or conditions of work*.

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(6) The term "commerce" means trade, *traffic*, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

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(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order *Numbered 6763* of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

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NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of

the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) *The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.*

SEC. 4 (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint ~~such employees, and~~, without regard for the provisions of the civil-service laws ~~or~~ *but subject to* the Classification Act of 1923, as amended, ~~appoint and fix the compensation of~~ an executive secretary, ~~assistant executive secretaries,~~ and such attorneys, ~~special experts,~~ examiners, and regional directors, *and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States*, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and un-

compensated services, as may from time to time be needed. *Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in Court. Nothing in this Act shall be construed to*

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authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall contine in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board ~~at their present grades and salaries,~~ *with salaries under the Classification Act of 1923, as amended,* without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

~~(b) The Board shall have authority and is directed to study the activities of such boards and agencies as have been or may be hereafter established by agreement, code, or law to deal with labor disputes, and to receive from such boards reports of their activities.~~

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RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National

Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the ~~majority of the~~ employees *as provided in section 9 (a)*, in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other condi-

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tions of employment: *Provided,* That any individual employee or *a* group of employees shall have the right at any time to present grievances to their employer ~~through representatives of their own choosing.~~

(b) The Board shall decide *in each case* whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (~~d~~) (*c*) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 ~~(f)~~ (*e*) or 10 ~~(g)~~ *(f),* and thereupon the decree of the court

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enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OE UNFAIR LABOR PRACTICE

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise, ~~except as proived in section 11.~~

~~(b) The Board may, in its discretion, defer in exercise of jurisdiction over any such unfair labor practice in any case where there is another means of prevention provided for by agreement, code, law, or otherwise, which has not been utilized. But in any case where the Board has so deferred, the Board may at any time thereafter institute proceedings under this Act in order to assure the effectuation of the policy of this Act and the development of a uniform body of administrative interpretation and practice with respect to unfair labor practices as defined herein.~~

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~~(c) Whenever there is a charge or the Board shall have reason to believe~~ (*b*) *Whenever it is charged* that any person has engaged in or is engaging in any such unfair labor prac-

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tice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than ~~three~~ *five* days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer *to the original or amended complaint* and to appear in person or otherwise and give testimony at the place and time fixed in the complaint~~, and to invoke the compulsory process of the Board in summoning witnesses in its behalf.~~ In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

~~(d)~~ (*c*) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board *upon notice* may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion

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that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including ~~restitution~~ *reinstatement of employees with or without back pay*, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order ~~dissolving~~ *dismissing* the said complaint.

~~(e)~~ (*d*) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner

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~~(f) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States within any circuit wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, or the Court of Appeals of the District of Columbia,~~

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of Appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified

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or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review *by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and* by the Supreme Court of the United States upon writ of certiorari or certification as pro-

vided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

~~(g)~~ *(f)* Any person aggrieved by ~~an~~ *a final* order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (f) *(e)*, and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

~~(h)~~ *(g)* The commencement of proceedings under subsection ~~(f) or (g)~~ *(e) or (f)* of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

~~(i)~~ *(h)* When granting appropriate temporary relief or *a* restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

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~~(j)~~ (*i*) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

~~SEC. 11. The several District Courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice affecting commerce; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, but solely at the request of the National Labor Relations Board, to institute proceedings in equity to prevent and restrain any such unfair labor practice, in the judicial district wherein such unfair labor practice occurred or wherein the person complained of resides~~

~~or transacts business. Such proceedings may be by way of petition setting forth the case and praying that such violation be enjoined and that such affirmative action, including restitution, be required as will effectuate the policies of this Act. When such person shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearings and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.~~

~~ARBITRATION~~

~~SEC. 12. (a) The Board shall have power to act and to appoint any person, agent, or agency to act as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the Board or its appointees. A provision in a written contract or a written agreement to submit to the arbitration of the Board or its appointees, when accepted by the Board after the dispute has arisen, shall be valid and irrevocable as to the parties to the agreement, save upon such grounds as exist at law or in equity for the revocation of any contract. If any party fails, neglects, or refuses to perform under such contract or submission, the Board, its agents or appointees, may nevertheless, in the discretion of the Board, proceed to hear the case ex parte, and the Board,~~

~~its agents or appointees, shall have the power to issue an award applicable to the submitting parties.~~

~~(b) The Board shall make and publish, pursuant to section 6 (a), rules for the conduct of arbitrations, and an agreement to submit to the arbitration of the Board, or its appointees or its agents, shall be deemed consent to the proceeding being conducted in accordance with such rules~~

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then obtaining unless otherwise specified in the arbitration contract or submission. An agreement to submit to the Board shall authorize the Board to appoint agents to take evidence, and in the discretion of the Board, to render a decision in the name of the Board on the findings thus presented, unless otherwise specified in the agreement. The Board may, however, in its discretion, render a decision on testimony taken before its agents.

(c) In any case in which an award has been made, the Board shall file the award in the clerk's office of the United States District Court that has been agreed upon by the parties, or, in default of such agreement, that of the district wherein the labor dispute arose or the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award on the grounds hereinafter set forth shall be filed in the clerk's office of the court in which the award has been filed,

the court shall enter judgment in accordance with the terms of the award: *Provided*, That no employee individually, and no group of employees collectively, shall be compelled to render labor or services without their consent.

(d) A petition for the impeachment of any award may be filed not more than ten days after the communication of notice of the filing of the award to the submitting parties. Notice of filing of such petition shall be served personally or sent by registered mail to each submitting party. The petition shall be sustained by the court only on one or more of the following grounds:

1. That the proceedings were not substantially in conformity with the provisions of the abritration agreement or rules adopted for the conduct of the arbitration.

2. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the award practiced fraud or corruption which affected the result: *Provided*, That partisanship known, or which by the exercise of due care should have been known, by a party prior to the arbitration proceeding, shall not constitute fraud of which he may avail himself within the meaning of this section.

(e) The court shall not set aside an award on the ground that it is invalid for uncertainty. In such case the court shall suspend action pending its resubmission of said award to the Board for interpretation.

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~~(f) Where there was an evident material miscalculation of figures, or an evident material mistake in the description of any person, thing, or property referred to in the award, or where the arbitrators have awarded on a matter not submitted to them, unless it is a matter affecting the merits of the decision on the matters submitted or where the award is imperfect in the matter of form not affecting the matter of the controversy, the court shall modify and correct the award so as to effect the intent thereof and promote justice between the parties, and thereupon shall enter judgment in accordance with subsection (a).~~

~~(g) The court shall construe every award with a view to favoring its validity. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but that a part of the award is valid, the court shall nevertheless enter judgment upon such part or parts of the award as are valid unless such part or parts are inseparable from the remainder of the award, in which case the entire award shall be vacated.~~

~~(h) If the petition for impeachment of the award is not sustained, the court shall enter judgment in accordance with the terms of the award, and in accordance with subsection (c). Where a petition for the impeachment of an award is granted, the award shall be vacated, and the court shall remand the arbitration to the Board, which may, in its discretion, accept the case for resubmission to arbitration in accordance with the terms of the original agreement or with such modification as the Board deems fit, or it may refuse to take any further action regarding it.~~

INVESTIGATORY POWERS

SEC. ~~13~~ *11*. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by ~~section 9, section 10, and section 12 (in any arbitration affecting commerce)~~ *section 9 and section 10*—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its

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member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, *or the Supreme Court of the District of Columbia*, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, ~~and the Supreme Court of the District of Columbia,~~ upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence,

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documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall

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be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same

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shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. ~~14~~ *12*. Any person who shall willfully ~~assault,~~ resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. ~~15~~ *13*. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. ~~16~~ *14*. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (l) and (m) of the

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Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall ~~apply~~ *remain in full force and effect.*

SEC. ~~17~~ *15*. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. ~~18~~ *16*. This Act may be cited as the "National Labor Relations Act."

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Calender No. 595

74TH CONGRESS, 1st Session | SENATE | REPORT No. 573

NATIONAL LABOR RELATIONS BOARD

MAY 1 (Calendar day, MAY 2), 1935.—Ordered to be printed

Mr. WALSH, from the Committee on Education and Labor, submitted the following

REPORT

[To accompany S. 1958]

The Committee on Education and Labor, to whom was referred the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, after holding hearings and giving consideration to the bill, report the same with amendments and recommend the passage of the bill as amended.

In view of the impending expiration on June 16, 1935, of the National Industrial Recovery Act, with its fair promise in section 7 (a) of promoting industrial peace by the recognition of the rights of employees to organize and bargain collectively, and of Public Resolution 44, Seventy-third Congress, under which the present National Labor Relations Board was created, the time has come for a clean decision either to withdraw that promise or to implement it by effective legislation. Under the conditions existing a year ago the Congress was perhaps justified in passing Public Resolution 44 in lieu of a comprehensive dealing with the problem. But the compelling force of another year's experience, demonstrating that the Government's promise in section 7 (a) stands largely unfulfilled, makes unacceptable any further temporizing measures. In the committee's judgment the present bill is a logical development of a philosophy and a consistent policy manifest in many acts of Congress dealing over a period of years with labor relations.

GENERAL OBJECTIVES OF THE BILL

(1) *Industrial peace.*—The first objective of the bill is to promote industrial peace. The challenge of economic unrest is not new. During the period from 1915 through 1921 there were on the average 3,043 strikes per year, involving the vacating of 1,745,000 jobs and

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the loss of 50,242,000 working days every 12 months. From 1922 through 1926 the annual average totaled 1,050 strikes, 775,000 strikers, and 17,050,000 working-days lost. From 1927 through 1931 the yearly average for disputes was 763, for employees leaving their work 275,000, and for days lost 5,665,000. In 1933 over 812,137 workers were drawn into strikes, and in 1934 the number rose to 1,277,344. In this 2-year period over 32,000,000 working-days were lost because of labor controversies. While exactitude is impossible, reliable authority has it that over a long range of time the losses due to strikes in this country has amounted to at least $1,000,000,000 per year. And no one can count the cost in bitterness of feeling, in inefficiency, and in permanent industrial dislocation.

Prudence forbids any attempt by the Government to remove all the causes of labor disputes. Disputes about wages, hours of work, and other working conditions should continue to be resolved by the play of competitive forces, so far as the provisions of codes of fair competition are not controlling. This bill in no respect regulates or even provides for supervision of wages or hours, nor does it establish any form of compulsory arbitration.

But many of the most fertile sources of industrial discontent can be segregated into a single category susceptible to legislative treatment. Competent students of industrial relations have estimated that at least 25 percent of all strikes have sprung from failure to recognize and utilize the theory and practices of collective bargaining, under which are subsumed the rights of employees to organize freely and to deal with employers through representatives of their own choosing. Figures compiled by the Bureau of Labor statistics of the United States Department of Labor confirm this estimate. And of the 6,355 new cases received by the regional agencies of the present National Labor Relations Board during the second half of 1934, the issue of collective bargaining was paramount in 2,330, or about 74 percent.

It is thus believed feasible to remove the provocation to a large proportion of the bitterest industrial outbreaks by giving definite legal status to the procedure of collective bargaining and by setting up machinery to facilitate it. Furthermore by establishing the only process through which friendly negotiations or conferences can operate in modern large-scale industry, there should be a tremendous lessening of the strife that has resulted from failure to adjust wage and hour disputes.

This opinion is substantiated by experience in the United States. For over half a century, beginning with the act of October 1, 1888 (25 Stat. 501), and culminating in the 1934 amendments to the Railway Labor Act (48 Stat. 1185), Congress has constantly elaborated and perfected its protection of collective bargaining in the railroad industry. Largely in consequence, our main artieries of commerce have been remarkably free from the paralyzing effect of industrial disputes since the great strike of 1894. During the World War, when it became imperative that production should be maintained without interruption, the Government set up the War Labor Board and without hesitation applied to industry generally the principles

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that had been tested upon the railroads. Not until after the armistice was a single award of the War Labor Board violated, and our country remained singularly free from the industrial strife that har-

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assed the other belligerent nations. Only after the war, when the Government withdrew its support of the practice of collective bargaining, was the country faced with a rising tide of labor disputes. And in this connection it must not be overlooked that the present National Labor Relations Board and its predecessor, the National Labor Board, despite the handicaps under which they have operated, handicaps which the present bill is designed to remove, have succeeded in keeping over 1,000,000 men at work upon terms satisfactory to all.

For these reasons, the committee believes that the present bill, by promoting peace in industry, will confer mutual benefits upon employers, workers, and the general public.

(2) *Economic adjustment.*—The second major objective of the bill is to encourage, by developing the procedure of collective bargaining, that equality of bargaining power which is a prerequisite to equality of opportunity and freedom of contract. The relative weakness of the isolated wage earner caught in the complex of modern industrialism has become such a commonplace of our economic literature and political vocabulary that it needs no exposition. This relative weakness of position has been intensified by the technological forces driving us toward greater concentration of business, by the tendency of the courts to narrow the application of the antitrust laws, and more recently by the policy of the Government in encouraging cooperative activity among trade and industrial groups.

Congress long ago recognized that it must play some part in redressing this inequality of bargaining power. A ready example has been the extensive role played by the Federal Government in the railroad industry, to which this report has referred. Another instance is the Norris-La Guardia Act (U. S. C., title 29, secs. 101–115). And a marked enlargement of Federal activity in the field of labor relations was one of the consequences of the Nation-wide depression beginning in 1929.

Between 1929 and February 1933, the index of industrial production dropped from 119 to 63, while construction activities fell from 117 to 19, and commodity prices from 95.3 to 59.8. Pay rolls receded from 107 to 40. In the 3 years following 1929, the income received by individuals in the United States shrunk from 81 billion dollars to 49, a reduction of 40 percent. At the height of the crisis, from 12 to 16 million people were unemployed.

While neither economists nor statesmen agreed entirely as to the causes or remedies for the depression, the overwhelming preponderance acknowledged that the disregard of economic forces for State lines, the interpenetration of various industries throughout the country, and the Nation-wide character of the prolonged calamity made national action essential. To speed business revival Congress therefore abetted Nation-wide cooperation among businessmen to outlaw unfair trade practices, to rationalize production, and to coordinate the distribution of goods. Supplementary to this, Congress accepted and acted upon the tested hypothesis that the depression

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had been provoked and accentuated by a long-continued and increasing disparity between production and consumption; that this disparity had resulted from a level of wages that did not permit the masses of consumers to relieve the market of an ever-increasing flow of goods; and that even businessmen who recognized these evils—and very many of them did—were powerless to act because of the uncontrolled

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competition in regard to wages and other working conditions. Having in mind both the temporary expediency of priming the pump of business and the permanent objective of crystallizing antidepressive forces for the future, Congress commenced the regulation of minimum wages and maximum hours to stabilize competitive conditions and to spread adequate consumer purchasing power throughout the Nation at large.

Congress recognized at the outset, however, that governmental regulation of wages and working conditions was not a complete solution, and that far from being a substitute for self-help by industry and labor, it was merely a bedrock upon which both might build. In order that industry might help itself, there was some relaxation of the antitrust laws; in order that labor might help itself, the prospectus of collective bargaining was set forth in section 7 (a) of the National Industrial Recovery Act (48 Stat. 198), supplemented in June 1934 by Public Resolution 44 (48 Stat. 1183), providing for governmentally supervised elections of representatives of employees.

Whatever divergence of opinion there may be as to the validity of some of the steps in the program above discussed, the committee believes that the desirability of collective bargaining, as it bears upon industrial peace and equality of bargaining power, is sufficiently well established and sufficiently divorced from the temporary aspects of the present economic situation to justify its affirmance in adequate and permanent Federal law.

WEAKNESSES IN EXISTING LAW

It is not necessary to cite extensive evidence of the break-down of section 7 (a) of the National Industrial Recovery Act and of Public Resolution 44. That fact is not only a matter of common knowledge, but has been admitted publicly by officials of the National Recovery Administration, by those connected with the National Labor Relations Board, and by many others whose experience merits attention.

A recital of the weaknesses in these laws, however, will indicate that the defects are neither intrinsic nor irremediable, but may be cured by the corrective steps taken in the present bill.

(1) *Ambiguity.*—The language of section 7 (a) has been subjected to a variety of interpretation by persons whose opinions weighed heavily with public opinion, either because they were specifically charged with the administration of that law or because they were intimately connected with some other phase of the Government's program. It is clear that both employers and employees are entitled to and will benefit by a greater precision and certainty in the law.

(2) *Excessive generality.*—While section 7 (a) states the principles of collective bargaining in general terms, it contains no particularities as to what practices are contrary to its purposes. This has greatly

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hampered not only administrative and enforcing agencies, but also all those subject to the law who wish to obey it.

(3) *Excessive diffusion of administrative responsibility.*—Today a wide variety of independent industrial boards, from 13 to 15 in number, are entrusted with the administration of section 7 (a). The present National Labor Relations Board has no appellate jurisdiction over any board established pursuant to an industrial code, either in respect to findings of fact or interpretations of law. And as there are now over a hundred codes which make some provisions for the

creation of such boards, it could be only a matter of time until this diffusion of authority would reach extraordinary proportions.

None of these boards has any actual power within itself to enforce section 7 (a). And even if such power could be granted wisely to a multitude of agencies, these boards are unsuited to the purpose. Largely bipartisan in character, they live in an atmosphere of conciliation and compromise that may be admirably suited to the settlement of wage and hour disputes where shifting standards must be applied to variegated local needs. But section 7 (a) is a uniform national policy established by law of Congress. As such it must receive uniform interpretation everywhere; it must be enforced by a judicial process rather than broken by compromise; and its enforcement must reside with governmental rather than with quasi-private agencies.

(4) *Disadvantages of tie-up with codes of fair competition.*—The incorporation of section 7 (a) in codes of fair competition entrusts the enforcement of that section largely to the National Recovery Administration. For example, even after the National Labor Relations Board decides that 7 (a) has been violated, ultimate decision as to whether the Blue Eagle shall be removed and Government contracts canceled rests with the Recovery Administration.

This arrangement is undesirable because policies admirably suited to the administration of canons of fair competition that have been written largely with the advice and consent of industry are not suited at all to the enforcement of section 7 (a), which is a law of Congress that becomes of moment precisely when it is defied. The tendency is to force the Recovery Administration upon the horns of a dilemma where it must decide either to speak softly about 7 (a) or disturb the amicable atmosphere in which the cooperative formation and execution of codes of fair competition thrives.

This evil is accentuated because section 7 (a) is now applicable only to codified industries. Thus recalcitrants are in a strategic position to threaten constantly the abandonment of their code if 7 (a) is invoked against them.

(5) *No power vested in National Labor Relations Board.*—The present National Labor Relations Board, which is the primary agency entrusted with the safeguarding of section 7 (a), has no quasi-judicial power. It must seek enforcement through reference to the Department of Justice. Since the Board has no power of subpena, except in connection with elections, the records which it builds up are based in many cases upon the testimony of complainants alone, supplemented at best by the testimony of such witnesses as the defendants volun-

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tarily present. This makes it necessary for the Department of Justice, in any event, to make further investigations before bringing suit in court, and if suit is brought at all, it must commence entirely *de novo* in court, with the defendant having 30 days to answer, or moving to dismiss, or applying for a bill of particulars. Thus is defeated the very purpose of an administrative agency, which is to provide specialized treatment of the factual aspects of a specialized type of controversy.

(6) *Obstacles to elections.*—Under Public Resolution 44, any attempt by the Government to conduct an election of representatives may be contested *ab initio* in the courts, although such election is in reality merely a preliminary determination of fact. This means that

the Government can be delayed indefinitely before it takes the first step toward industrial peace. After almost a year not a single case, in which a company has chosen to contest an election order of the Board, has reached decision in any circuit court of appeals.

This break-down of the law is breeding the very evil which the law was designed to prevent. During the past year and a half the country has lived under the constant shadow of actual or impending warfare in factory and in mine. A large portion of this strife, which falls so heavily upon the general public, may be attributed to the evils enumerated above.

ANALYSIS OF THE BILL

Section 1. Findings and declaration of policy.—This section states the dual objective of Congress to promote industrial peace and equality of bargaining power by encouraging the practice of collective bargaining and protecting the rights upon which it is based.

Section 2. Definitions.—It will be sufficient to discuss the more important definitions.

The term "employer" excludes labor organizations, their officers, and agents (except in the extreme case when they are acting as employers in relation to their own employees). Otherwise the provisions of the bill which prevent employers from participating in the organizational activities of workers would extend to labor unions as well, and thus would deprive unions of one of their normal functions.

The term "employee" is not limited to the employees of a particular employer. The reasons for this are as follows: Under modern conditions employees at times organize along craft or industrial lines and form labor organizations that extend beyond the limits of a single-employer unit. These organizations at times make agreements or bargain collectively with employers, or with an association of employers. Through such business dealings, employees are at times brought into an economic relationship with employers who are not their employers. In the course of this relationship, controversies involving unfair labor practices may arise. If this bill did not permit the Government to exercise complete jurisdiction over such controversies (arising from unfair labor practices), the Government would be rendered partially powerless, and could not act to promote peace in those very wide-spread controversies where the establishment of peace is most essential to the public welfare.

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The term "employee" also includes any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice, who has not attained any other regular or substantially equivalent employment. The bill thus observes the principle that men do not lose their right only to be considered as employees for the purposes of this bill merely by collectively refraining from work during the course of a labor controversy. Recognition that strikers may retain their status as employees has frequently occurred in judicial decisions. (See, for example, *Michaelson* v. *United States* (291 Fed. 940), reversed on other grounds in 266 U. S. 42.) To hold otherwise for the purposes of this bill would be to withdraw the Government from the field at the very point where the process of collective bargaining has reached a critical stage and where the general public interest has mounted to its highest point. And to hold that a worker who because of an unfair labor practice

has been discharged or locked out or gone on strike is no longer an employee, would be to give legal sanction to an illegal act and to deny redress to the individual injured thereby.

For administrative reasons, the committee deemed it wise not to include under the bill agricultural laborers, persons in domestic service of any family or person in his home, or any individual employed by his parent or spouse. But after deliberation, the committee decided not to exclude employees working for very small employer units. The rights of employees should not be denied because of the size of the plant in which they work. Section 7 (a) imposes no such limitation. And in cases where the organization of workers is along craft or industrial lines, very large associations of workers fraught with great public significance may exist, although all the members therein work in very small establishments. Furthermore, it is clear that the limitation of this bill to events affecting interstate commerce is sufficient to prevent intervention by the Federal Government in controversies of purely local significance.

The term "labor organization" is phrased very broadly in order that the independence of action guaranteed by section 7 of the bill and protected by section 8 shall extend to all organizations of employees that deal with employers in regard to "grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." This definition includes employee-representation committees and plans in order that the employers' activities in connection therewith shall be equally subject to the application of section 8.

The term "affecting commerce" is inserted as a short cut to prevent the repetition of lengthy jurisdictional phraseology throughout the bill. The bill limits Federal action to areas sanctioned by the commerce clause. The bill does not project the Federal Government into matters of purely intrastate concern. It applies only in matters which burden or affect or obstruct interstate commerce, or which have led or tend to lead to a labor dispute that might have such effect upon interstate commerce. (The more general discussion of constitutional questions is deferred until the last section of this report).

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The term "labor dispute" includes cases where the disputants do not stand in the proximate relation of employer and employee. An identical provision is contained in section 13 (c) of the Norris-LaGuardia Act (U. S. C., title 29, secs. 101–115), and in most recent labor legislation dealing with disputes. This definition does not mean that the Government could intervene in a "dispute" between an employer and, let us say, a critical college professor; for jurisdiction under this bill depends upon the charge of an unfair labor practice affecting commerce, and there could be no such practice involving the employer and the college professor. But unfair labor practices may, by provoking a symptahetic strike for example, create a dispute affecting commerce between an employer and employees between whom there is no proximate relationship. Liberal courts and Congress have already recognized that employers and employees not in proximate relationship may be drawn into common controversies by economic forces. There is no reason why this bill should adopt a narrower view, or prevent action by the Government when such a controversy occurs.

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Section 3. National Labor Relations Board.—This section creates as an independent agency in the executive branch of the Government, a board to be known as the National Labor Relations Board. The Board shall be composed of three members, appointed for 5-year terms by the President by and with the advice and consent of the Senate.

Section 4. Organization of the Board.—This section provides that members of the Board shall receive salaries of $10,000 a year each. It also provides for the appointment of employees, for the transfer to the Board of the cases, records, and employees of the present National Labor Relations Board, and for the method of paying the expenses of the Board. These provisions are all in accordance with commonly accepted practice in setting up administrative agencies.

It is of special import that the National Labor Relations Board is not empowered to engage in conciliation of wage and hour disputes insofar as that activity can be carried on by the Department of Labor. Duplication of services is thus avoided, and in addition the Board is left free to engage in quasi-judicial work that is essentially different from conciliation or mediation of wage and hour controversies. And of course the binding effect of the provisions of this bill forbidding unfair labor practices are not subjects for mediation or conciliation.

The committee does not believe that the Board should serve as an arbitration agency. Such work, like conciliation, might impair its standing as an interpreter of the law. In addition, there is at present no dearth of arbitration agencies in this country. If arbitration lags, it is only because parties are not ready to submit to it. And compulsory arbitration has not received the sanction of the American people.

Section 5. Prosecution of inquiry.—This section follows the customary policy of allowing the Board or its agencies to move to the scene of action, rather than compelling all parties at all times to come to Washington.

Section 6. Rules and regulations.—This section follows the customary policy of giving the Board the power to make and amend rules

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and regulations. Such rules and regulations become effective only upon publication and there are no criminal penalties attached to their breach.

RIGHTS OF EMPLOYEES—UNFAIR LABOR PRACTICES

Sections 7 and 8. Rights of employees—Unfair labor practices.—These sections are designed to establish and protect the basic rights incidental to the practice of collective bargaining. At this juncture the committee wishes to emphasize two points. In the first place, the unfair labor practices under the purview of this bill are strictly limited to those enumerated in section 8. This is made clear by paragraph 8 of section 2, which provides that "The term 'unfair labor practice' means any unfair labor practice listed in Section 8," and by Section 10 (a) empowering the Board to prevent any unfair labor practice "listed in Section 8." Unlike the Federal Trade Commission Act, which deals somewhat analagously with unfair trade practices, this bill is specific in its terms. Neither the National Labor Relations Board nor the courts are given any blanket authority to prohibit whatever labor practices that in their judgment are deemed to be unfair. Secondly, as will be shown directly, the unfair labor

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practices listed in this bill are supported by a wealth of precedent in prior Federal law.

employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

In conjunction with section 7, the first unfair labor practice enumerated in section 8 makes it illegal for an employer—

to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

This familiar statement calls to mind the language of section 7 (a) of the National Industrial Recovery Act (48 Stat. 198, U. S. C., title 15, sec. 707 (a)), which provides that—

Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Similarly section 2 of the Railway Labor Act of 1934 (48 Stat. 1185) provides:

The purposes of the Act are * * * (3) to provide for the complete independence of carriers and of employees in the matter of self-organization * * *. Employees shall have the right to organize and bargain collectively through representatives of their own choosing * * *. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice * * *.

Similar statements will be found in section 2 of the Railway Labor Act of 1926 (44 Stat. 577, U. S. C., title 45, sec. 152); section 2 of the Norris-La Guardia Act (47 Stat. 70, U. S. C., title 29, sec. 102); section 77 (p) and (q) of the 1933 amendments to the Bankruptcy Act (47 Stat. 1481, U. S. C., title 11, sec. 205 (p) and (q)); and section

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7 (e) of the act creating the office of the Federal Coordinator of Transportation (48 Stat. 214, U. S. C., title 49, sec. 257 (e)).

The four succeeding unfair-labor practices are designed not to impose limitations or restrictions upon the general guaranties of the first, but rather to spell out with particularity some of the practices that have been most prevalent and most troublesome.

THE COMPANY-UNION PROBLEM

The second unfair labor practice deals with the so-called "company-union problem." It forbids an employer—

to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

(The proviso will be discussed subsequently.)

With identical objectives in view, section 2 of the Railway Labor Act of 1934 provides:

The purposes of the Act are * * * (3) * * * it shall be unlawful for any carrier to interfere in any way with the organization of its employees. * * * (4) It shall be unlawful for any carrier * * * to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor.

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To the same effect are the provisions of the Bankruptcy Act as amended in 1933 and 1934, and section 7 (e) of the Emergency Railroad Transportation Act of 1933. Under these sections it is unlawful for a carrier (whether under control of a judge, trustee, receiver, or private management) or for a judge, trustee, or receiver in a corporate reorganization under the Bankruptcy Act—

* * * to interfere in any way with the organizations of employees or to use the funds of the (property) under his jurisdiction in maintaining so-called "company unions."

This bill does nothing to outlaw free and independent organizations of workers who by their own choice limit their cooperative activities to the limits of one company. Nor does anything in the bill interfere with the freedom of employers to establish pension benefits, outing clubs, recreational societies, and the like, so long as such organizations do not extend their functions to the field of collective bargaining, and so long as they are not used as a covert means of discriminating against or in favor of membership in any labor organization. Such agencies, confined to their proper sphere, have promoted amicable relationships between employers and employees and the committee earnestly hopes that they will continue to function.

The so-called "company-union" features of the bill are designed to prevent interference by employers with organizations of their workers that serve or might serve as collective bargaining agencies. Such interference exists when employers actively participate in framing the constitution or bylaws of labor organizations; or when, by provisions in the constitution or by laws, changes in the structure of the organization cannot be made without the consent of the employer. It exists when they participate in the internal management or elections of a labor organization or when they supervise the agenda or procedure of meetings. It is impossible to catalog all the practices that might

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constitute interference, which may rest upon subtle but conscious economic pressure exerted by virtue of the employment relationship. The question is one of fact in each case. And where several of these interferences exist in combination, the employer may be said to dominate the labor organization by overriding the will of employees.

The committee feels justified, particularly in view of statutory precedents, in outlawing financial or other support as a form of unfair pressure. It seems clear that an organization or a representative or agent paid by the employer for representing employees cannot command, even if deserving it, the full confidence of such employees. And friendly labor relations depend upon absolute confidence on the part of each side in those who represent it.

But the committee has been extremely careful not to work injustice by carrying these strictures too far. To deny absolutely by law the right of employees to confer with management during working hours without loss of time or pay would interrupt the very negotiations which it is the object of this bill to promote. For these reason, there is attached to the second unfair labor practice the following proviso:

> That, subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

This proviso is surrounded by adequate safeguards. Where the right to receive normal pay while conferring is bestowed upon favored employees or organizations rather than equally upon all, it will run

up against many of the prohibitions of section 8. In addition, the proviso in entirety is made subject to the rules and regulations of the Board, thus enabling the Board to confine it to whatever extent may be necessary to effectuate the purposes of the bill.

The committee's decision to prevent company interference with employee organizations has been influenced by recent events.

Practically 70 percent of the employer-promoted unions have sprung up since the passage of section 7 (a) of the National Industrial Recovery Act. The testimony before the committee has indicated that the active entry of some employers into a vigorous competitive race for the organization of workers is not conducive to peace in industry. It is the wish of the committee to prevent insofar as possible the perpetuation of bitterness or strife.

The third unfair labor practice forbids an employer—

> by discrinination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

(The proviso will be discussed subsequently.)

This provision rounds out the idea expressed in section 7 (a) of the National Industrial Recovery Act to the effect that—

> No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing * * *.

Of course nothing in the bill prevents an employer from discharging a man for incompetence; from advancing him for special aptitude;

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or from demoting him for failure to perform. But if the right to be free from employer interference in self organization or to join or refrain from joining a labor organization is to have any practical meaning, it must be accompanied by assurance that its exercise will not result in discriminatory treatment or loss of the opportunity for work.

PROBLEM OF THE CLOSED SHOP

The proviso attached to the third unfair-labor practice deals with the question of the closed shop. Propaganda has been wide-spread that this proviso attaches special legal sanctions to the closed shop or seeks to impose it upon all industry. This propaganda is absolutely false. The reason for the insertion of the proviso is as follows: According to some interpretations; the provision of section 7 (a) of the National Industrial Recovery Act, assuring the freedom of employees "to organize and bargain collectively through representatives of their own choosing", was deemed to illegalize the closed shop. The committee feels that this was not the intent of Congress when it wrote section 7 (a); that it is not the intent of Congress today; and that it is not desirable to interfere in this drastic way with the laws of the several States on this subject.

But to prevent similar misconceptions of this bill, the proviso in question states that nothing in this bill, or in any other law of the United States, or in any code or agreement approved or prescribed thereunder, shall be held to prevent the making of closed-shop agreements between employers and employees. In other words, the bill does nothing to facilitate closed-shop agreements to or make them legal in any State where they may be illegal; it does not interfere with

the *status quo* on this debatable subject but leaves the way open to such agreements as might now legally be consummated, with two exceptions about to be noted.

The assertion that the bill favors the closed shop is particularly misleading in view of the fact that the proviso in two respects actually narrows the now existent law regarding closed-shop agreements. While today an employer may negotiate such an agreement even with a minority union, the bill provides that an employer shall be allowed to make a closed-shop contract only with a labor organization that represents the majority of employees in the appropriate collective-bargaining unit covered by such agreement when made.

Secondly, the bill is extremely careful to forestall the making of closed-shop agreements with organizations that have been "established, maintained, or assisted" by any action defined in the bill as an unfair labor practice. And of course it is clear that no agreement heretofore made could give validity to the practices herein prohibited by section 8.

The fourth unfair labor practice, which prohibits the discharge of or discrimination against an employee for filing charges or giving testimony under the bill, is self-explanatory.

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DUTY TO BARGAIN COLLECTIVELY

The fifth unfair labor practice makes it illegal for an employer—

to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

The committee wishes to dispel any possible false impression that this bill is designed to compel the making of agreements or to permit governmental supervision of their terms. It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement, because the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory.

But, after deliberation, the committee has concluded that this fifth unfair labor practice should be inserted in the bill. It seems clear that a guarantee of the right of employees to bargain collectively through representatives of their own choosing is a mere delusion if it is not accompanied by the correlative duty on the part of the other party to recognize such representatives as they have been designated (whether as individuals or labor organizations) and to negotiate with them in a bona fide effort to arrive at a collective bargaining agreement. Furthermore, the procedure of holding governmentally supervised elections to determine the choice of representatives of employees becomes of little worth if after the election its results are for all practical purposes ignored. Experience has proved that neither obedience to law nor respect for law is encouraged by holding forth a right unaccompanied by fulfillment. Such a course provokes constant strife, not peace.

Subsequently, in this report the committee adverts to proposals for including in the bill prohibitions against practices by employees.

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THE MAJORITY RULE

Section 9. Selection of representatives.—Section 9 (a) sets forth the majority rule. It provides that—

Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

(The proviso will be discussed later.)

The principle of majority rule has been applied successfully by governmental agencies and embodied in laws of Congress. It was promulgated by the National War Labor Board created by President Wilson in the spring of 1918. It has been followed without deviation by the Railway Labor Board, created by the Transportation Act of 1920. Public Resolution No. 44, approved June 1934, contemplated majority rule in that it provided for secret elections. The 1934 amendments to the Railway Labor Act provided:

The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act.

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And the rule is sanctioned by our governmental practices, by business procedure, and by the whole philosophy of democratic institutions.

The object of collective bargaining is the making of agreements that will stabilize business conditions and fix fair standards of working conditions. Since it is wellnigh universally recognized that it is practically impossible to apply two or more sets of agreements to one unit of workers at the same time, or to apply the terms of one agreement to only a portion of the workers in a single unit, the making of agreements is impracticable in the absence of majority rule. And by long experience, majority rule has been discovered best for employers as well as employees. Workers have found it impossible to approach their employers in a friendly spirit if they remained divided among themselves. Employers likewise, where majority rule has been given a trial of reasonable duration, have found it more conductive to harmonious labor relations to negotiate with representatives chosen by the majority than with numerous warring factions.

Majority rule carries the clear implication that employers shall not interfere with the practical application of the right of employees to bargain collectively through chosen representatives by bargaining with individuals or minority groups in their own behalf, after representatives have been picked by the majority to represent all. But majority rule, it must be noted, does not imply that any employee can be required to join a union, except through the traditional method of a closed-shop agreement, made with the assent of the employer. And since in the absence of such an agreement the bill specifically prevents discrimination against anyone either for belonging or for not belonging to a union, the representatives selected by the majority will be quite powerless to make agreements more favorable to the majority than to the minority. In addition, the bill preserves at all times the right of any individual employee or group of employees to present grievances to their employer.

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Another protection for minorities is that the right of a majority group through its representatives to bargain for all is confined by the bill to cases where the majority is actually organized "for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." An organization which is not constructed to practice genuine collective bargaining cannot be the representative of all employees under this bill.

Section 9 (b) empowers the National Labor Relations Board to decide whether the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit. Obviously, there can be no choice of representatives and no bargaining unless units for such purposes are first determined. And employees themselves cannot choose these units, because the units must be determined before it can be known what employees are eligible to participate in a choice of any kind.

This provision is similar to section 2 of 1934 amendments to the Railway Labor Act (48 Stat. 1185), which states that—

> In the conduct of any election for the purpose herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election.

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ELECTIONS

Section 9 (c) empowers the National Labor Relations Board, whenever a question affecting commerce arises concerning the representation of employees, to conduct an investigation either by secret ballot or otherwise to determine such representatives. In any such investigation, an appropriate hearing must be held.

Section 9 (d) makes it absolutely clear that there shall be no right to court review anterior to the holding of an election. An election is the mere determination of a preliminary fact, and in itself has no substantial effect upon the rights of either employers or employees. There is no more reason for court review prior to an election than for court review prior to a hearing. But if subsequently the Board makes an order predicated upon the election, such as an order to bargain collectively with elected representatives, then the entire election procedure becomes part of the record upon which the order of the Board is based, and is fully reviewable by any aggrieved party in the Federal courts in the manner provided in section 10. And this review would include within its scope the action of the Board in determining the appropriate unit for purposes of the election. This provides a complete guarantee against arbitrary action by the Board.

PREVENTION OF UNFAIR LABOR PRACTICES

Section 10. Procedure before the Board.—This is the most important procedural section. Despite the wide-spread charges that the bill invokes novel procedure and vests unusual powers in an administrative agency, the bill is modeled closely upon numerous Federal Statutes setting up administrative regulatory bodies of a quasi-judicial character. The common procedure is so well known that the committee deems it unnecessary in substantiation of this statement to refer to any analogous statutes save the Federal Trade Commission Act, section 5.

The bill empowers the National Labor Relations Board to hold hearings, either itself or through its agents, upon charges of unfair

labor practices. After such hearings the Board, and the Board alone, may issue orders requiring the person complained of to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement with or without back pay, as may be necessary to effectuate the policies of the bill. If no sufficient case is made out, the Board shall issue an order dismissing the complaint.

If an order of the Board is disobeyed, the Board may petition for enforcement in any circuit court of appeals of the United States in any circuit wherein the unfair labor practice in question occurred or wherein the disobedient person resides or transacts business or in the appropriate district court if all circuit courts are in vacation. In such instances, the court shall have power to grant temporary relief or a restraining order, and to make and file a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may likewise obtain review in the appropriate court.

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Section 10 (a) gives the National Labor Relations Board exclusive jurisdiction to prevent and redress unfair labor practices, and, taken in conjunction with section 14, establishes clearly that this bill is paramount over other laws that might touch upon similar subject matters. Thus it is intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining.

INVESTIGATORY POWERS

Section 11. Investigation.—This section confers upon the Board the usual investigatory powers vested in administrative agencies, but these powers are limited to the functions imposed in sections 9 and 10.

Section 12. Protection of Federal officials.—This section imposes a criminal penalty, not exceeding imprisonment for more than 1 year, or a fine not exceeding $5,000, or both, upon any person who willfully interferes with any member or agent of the Board in the performance of duties pursuant to the bill. Neither this nor any other section of the bill provides any criminal penalty (other than the usual penalty for contempt) for engaging in an unfair labor practice, even after a court had ordered its cessation.

LIMITATIONS

Section 13. The right to strike.—This section provides that "nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike." It is taken in substance from section 6 of Public Resolution No. 44, Seventy-third Congress.

Section 14. Relationship to other legislation.—This section is designed to resolve conflicts between this bill and other laws.

Section 15. Separability.—This section contains the standard provision for separability in the event that the application of some part of the bill might be invalid.

Section 16. Title.—This section provides that the bill may be cited as the "National Labor Relations Act."

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REASONS FOR CONFINING THE BILL TO UNFAIR LABOR PRACTICES BY EMPLOYERS

One suggestion in regard to this bill has been advanced so frequently that the committee deems it advisable to set forth its reason for rejecting it. This proposal is that employees and labor organizations, as well as employers, should be prohibited from interfering with, restraining, or coercing employees in their organization activities or their choice of representatives.

The argument most frequently made for this proposal is the abstract one that it is necessary in order to provide fair and equal treatment of employers and employees. The bill prohibits employers from interfering with the right of employees to organize. The corresponding right of employers is that they should be free to organize without interference on the part of employees; no showing has been made that

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this right of employers to organize needs Federal protection as against employees. Regulation of the activities of employees and labor organizations in regard to the organization of employees is no more germane to the purposes of this bill than would be regulation of activities of employers and employer associations in connection with the organization of employers in trade associations.

This erroneously conceived mutuality argument is that since employers are to be prohibited from interfering with the organization of workers, employees and labor orgaizations should also be prohibited from engaging in such activities. To say that employees and labor organizations should be no more active than employers in the organization of employees is untenable; this would defeat the very objects of the bill.

There is an even more important reason why there should be no insertion in the bill of any provision against coercion of employees by employees or labor organizations. Courts have held a great variety of activities to constitute "coercion": A threat to strike, a refusal to work on material of nonunion manufacture, circularization of banners and publications, picketing, even peaceful persuasion. In some courts, closed-shop agreements or strikes for such agreements are condemned as "coercive." Thus to prohibit employees from "coercing" their own side would not merely outlaw the undesirable activities which the word connotes to the layman, but would raise in Federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organizations, ghosts which it was supposed Congress had laid low in the Norris-LaGuardia Act.

Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. The Norris-LaGuardia Act does not deny to employers relief in the Federal courts against fraud, violence or threats of violence. See 29 U. S. C. § 104 (e) and (i).

Racketeering under the guise of labor-union activity has been successfully enjoined under the antitrust laws when it affected interstate commerce. The latest case along these lines is *United States* v. *Local No. 167 et al.* (291 U. S. 293).

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In addition, the procedure set up in this bill is not nearly so well suited as is existing law to the prevention of such fraud and violence. Deliberations and hearings by the Board, followed by orders that must be referred to the Federal courts for enforcement, are methods of procedure that could never be sufficiently expeditious to be effective in this connection.

The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board in every case with countercharges and recriminations that would prevent it from doing the task that needs to be done. There is hardly a labor controversy in which during the heat of excitement statements

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are not made on both sides which, in the hands of hostile or unsympathetic courts, might be construed to come under the common-law definition of fraud, which in some States extends even to misstatements innocently made, but without reasonable investigation. And if the Board should decide to dismiss such charges, its order of dismissal would be subject to review in the Federal courts.

Proposals such as these under discussion are not new. They were suggested when section 7 (a) of the National Industrial Recovery Act was up for discussion, and when the 1934 amendments to the Railway Labor Act were before Congress. In neither instance did they command the support of Congress.

CONSTITUTIONALITY

The committee is convinced that this proposal keeps within the confines of the constitutional power of Congress. The two main questions involved are: (1) Are the regulations of the employer-employee relationship herein contemplated within the boundaries of due process of law and (2) can Federal jurisdiction be sustained under the commerce clause.

On the due-process point, the case of *Texas & New Orleans Railroad* v. *Brotherhood* (281 U. S. 548) completely sustained the authority of Congress to protect full freedom of organization and to prevent employer domination of employee organizations. This was a suit by a railway brotherhood to restrain the railroad from interfering with the right of its employees to self-organization and the designation of representatives in violation of the Railway Labor Act of 1926. The decree of the lower court, which was sustained in full by the Supreme Court, compelled the company (1) to completely disestablish its company union as representative of its employees; (2) to reinstate the brotherhood (which was the recognized representative chosen by the majority before the company began its unlawful interference) as the representative of all employees until they should make another free choice; (3) to restore to service and to stated privileges certain employees who had been discharged for activities in behalf of the brotherhood. The opinion of a unanimous Court was written by the present Chief Justice.

Turning to the question of interstate commerce, the figures cited earlier in this report can leave no doubt that widespread industrial disturbances burden the flow of commerce. That fact has received recognition by our highest tribunal in such well-known cases as *In re Debs* (158 U. S. 564), *Duplex Printing Press Co.* v. *Deering* (254 U. S. 443), *American Steel Foundries* v. *Tri-City Central Trades*

Council (257 U. S. 184); *Coronado Coal Co.* v. *United Mine Workers* (268 U. S. 295), and *Bedford Cut Stone Co.* v. *Stone Cutters Association* (274 U. S. 37). Equally true it is that failure to accept the procedure of collective bargaining has been the cause of some of the most violent of these industrial disputes. That issue was paramount in the *Debs case, the Coronado case,* and *International Organization* v. *Red Jacket C. C. & C. Co.* (18 Fed. (2d) 839, cert. den. 275 U. S. 536). And the remedy has been as well recognized as the cause. Whenever

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given a fair trial, machinery for facilitating collective bargaining has promoted industrial peace.

It is clear, in addition, that unfair labor practices which tend to promote strife may be enjoined before the strife occurs. Civilized law is preventive as well as punitive. As Chief Justice Taft said in the first *Coronado case* (259 U. S. 344):

> If Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain, or burden it, it has the power to subject them to national supervision or restraint.

See also *Wilson* v. *New*, 243 U. S. 322; *United States* v. *Ferger* (250 U. S. 199); *Stafford* v. *Wallace* (258 U. S. 495); *Chicago Board of Trade* v. *Olson* (262 U. S. 1); *Texas & New Orleans Railroad* v. *Brotherhood*, *supra*.

Cases under the antitrust laws, cited for the proposition that the Federal Government cannot deal with the employer-employee relationship, are not in point. They turned not on any question of constitutional limitations, but upon statutory construction of the extent of equity jurisdiction over labor activities under the antitrust laws. But the Federal Government has power to prevent burdens upon interstate commerce that reached beyond the intent of those laws in regard to labor disputes, and it is intended in this bill to exercise the full constitutional power of Congress to prevent the described unfair labor practices, which have no extenuating social values operating in their favor.

The committee is further of the opinion that congressional power to prevent these unfair labor practices exists and should be exercised even where the threat of strife is not immiment. In line with modern economic developments, the courts have recognized that unsound economic practices have a marked effect upon the volume and stability of commerce. This is illustrated in the cases prohibiting unfair methods of competition under the Federal Trade Commission Act. Again, the general proposition is aptly stated in *Chicago Board of Trade* v. *Olsen* (262 U. S. 1), upholding Federal regulation of future sales on grain exchanges, an activity in itself purely local. The court said:

> The question of price dominates trade between the States. Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided.

In effect upon commerce, wage levels are as significant as price levels, for the exchange of goods depends as much upon the consumer's income as upon the price which he must pay. Income and cost of living must be indexed in terms of each other. An analysis of the effect of a decline in mass purchasing power upon all commercial transactions forces the conclusion that the protection of Nation-wide

commerce depends as much upon a floor for wages as upon a ceiling for prices. And in stabilizing wages, no factor plays a more important role than collective bargaining.

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In the case of *Appalachian Coals, Inc.*, v. *United States* (288 U. S. 344), Chief Justice Hughes wrote:

> The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts, and communities dependent upon profitable production are prostrated, the wells of commerce go dry.

This statement is a landmark of contemporary realism in regard to the commerce power. While this bill of course does not intend to go beyond the consitutional power of Congress, as that power may be marked out by the courts, it seeks the full limit of that power in preventing these unfair labor practices. It seeks to prevent them, whether they burden interstate commerce by causing strikes, or by occurring in the stream of interstate commerce, or by overturning the balance of economic forces upon which the full flow of commerce depends.

PROPOSED AMENDMENTS TO S. 1958

CONGRESSIONAL RECORD, SENATE—MAY 7, 1935

(79 Cong. Rec. 7042–7043)

NATIONAL LABOR RELATIONS BOARD—AMENDMENT

MR. ROBINSON submitted an amendment intended to be proposed by him to the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, which was ordered to lie on the table and to be printed.

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74TH CONGRESS
1ST SESSION

S. 1958

IN THE SENATE OF THE UNITED STATES

MAY 7, 1935

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ROBINSON to the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, viz:

On page 8, lines 2 to 4, strike out the words "Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court" and insert in lieu thereof the following: "The Attorney General is authorized to appear for and represent the Board in any judicial proceeding to which the Board is a party."

On page 16, line 3, strike out the word "may" and insert after the word "effect" the words "the Attorney General may, at the request of".

On page 25, line 17, strike out the word "Board" and insert in lieu thereof the words "United States attorney for the proper district".

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CONGRESSIONAL RECORD, SENATE—MAY 14, 1935

(79 Cong. Rec. 7483)

SETTLEMENT OF LABOR DISPUTES

Mr. WAGNER. Mr. President, I move that the Senate proceed to the consideration of Calendar 595, being the bill (S. 1958) to create a National Labor Relations Board, and so forth.

The motion was agreed to; and the Senate proceeded to consider the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, which had been reported from the Committee on Education and Labor with amendments.

CONGRESSIONAL RECORD, SENATE—MAY 15, 1935

(79 Cong. Rec. 7565)

SETTLEMENT OF LABOR DISPUTES

The Senate resumed the consideration of the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes to create a National Labor Relations Board, and for other purposes.

Mr. WAGNER. Mr. President, I ask unanimous consent that the formal reading of the bill be dispensed with and that the bill be read for amendment, the amendments of the committee to be first considered.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

Mr. WAGNER. Mr. President, the national labor relations bill does not break with our traditions. It is the next step in the logical unfolding of man's eternal quest for freedom. For 25 centuries of recorded time before the machine age we sought relief from nature's cruel and relentless tyranny. Only 150 years ago did this country cast off the shackles of political despotism. And today, with economic problems occupying the center of the stage, we strive to liberate the common man from destitution, from insecurity, and from human exploitation.

In this modern aspect of a time-worn problem the isolated worker is a plaything of fate. Caught in the labyrinth of modern industrialism and dwarfed by the size of corporate enterprise, he can attain freedom and dignity only by cooperation with others of his group. This truism has been paid at least the lip service of universal opinion. It is on the page of every treatise and in the platform of every political party.

LEGAL BACKGROUND: THE ANTITRUST LAWS AND THE LABOR INJUNCTION

In fact, this simple idea has become so embedded in our habits of thought that we find it difficult to realize that only a little over a century ago our law denied workers the right to combine for the

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purpose of raising wages. In the Philadelphia Cordwainer's case, decided in 1806 (Common and Gilmore, Doc. Hist., vol. 3, pp. 59–249), it was said of such a combination:

> This measure is pregnant with public mischief and private injury * * * tends to demoralize the workmen * * * destroy the trade of the city, and leaves the pockets of the whole community to the discretion of the concerned. If these evils were unprovided for by the law now existing, it would be necessary that laws should be made to restrain them.

Fortunately, it was not long before the law became more sensitive to life. The cornerstone of industrial liberty was laid in Massachusetts in 1842 by the great Chief Justice Shaw. In *Commonwealth* v. *Hunt* (4 Metcalf 111) he said:

> We think, therefore, that associations may be entered into * * * and yet so far from being criminal or unlawful, the object may be highly meritorious and public spirited.

The classic modern statement was written by Chief Justice Taft in *American Steel Foundry* v. *The Tri-City Central Trades Council* (257 U. S. 184 (1921)). In that opinion trade unions received the following encomium:

> They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily upon his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was, nevertheless, unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employers.

As the increasing mechanization of industry and the flowering of the factory system built up larger and larger aggregates of capital, it became obvious that our cherished equality of opportunity could not be maintained merely by pious declarations or abstract guaranties of freedom. By the second half of the nineteenth century, the active intervention of the Government was necessary to prevent economic concentration from fostering economic despotism. In consequence, the year 1890 witnessed the enactment of the Sherman antitrust laws, designed to protect the laborer, the small business man, and the consumer from the power of combination and the greed of monopoly.

It is not my intent to debate at this time why the antitrust laws withered under sustained assault in the courts. Whether it was due to the formidable battery of lawyers that the powerful could gather, or to the subconscious prejudices that judges carried over from their former associations, or to the fact that the laws themselves were not in harmony with the technique of modern industry are matters of relatively little moment today. The important fact is that the laws failed.

In the very first prosecution which came before the Supreme Court, *United States* v. *E. C. Knight & Co.* (156 U. S. 1 (1894)), it was held that a combination embracing 98 percent of the sugar-refinery capacity of the country was not in restraint of trade because manufacturing was not commerce. This decision, based upon Webster's dictionary rather than upon economic reality, practically inhibited further action by the Government for a decade and created the impression that combines of industrial concerns were virtually impregnable.

Hope for the vindication of the law rose in 1911, when the Court ordered the dissolution of the Standard Oil Co., *Standard Oil Co. of*

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New Jersey v. *United States* (221 U. S. 1). **[7566]** But the rule of reason enunciated in that famous case soon became a vehicle for substituting the economic opinions of the Court for the expressed policy of Congress. The copious expansiveness of the rule was portended in *United States* v. *United States Steel Corporation* (251 U. S. 417 (1920)). In writing the opinion of the Court which sanctioned that combine, Mr. Justice McKenna said:

> The power attained was much greater than that possessed by any one competitor. It was not greater than that possessed by all of them.

Thus it was held in effect that a monster combination which controlled from 40 to 50 percent of the steel industry was not in violation of the public interest, since its holdings did not exceed those of all of its competitors. It was overlooked that a scattered field of small rivals might be completely overridden by a single adversary representing even 40 percent of the total national strength.

The Steel case was followed closely by *United Shoe Machinery Corporation* v. *United States* (258 U. S. 451 (1922)), which upheld restrictive tying clauses enabling one corporation to control more than 95 percent of the shoe-machinery business of the country. But the final quietus to the anti-trust laws was given in *United States* v. *International Harvester Co.* (74 U. S. 693 (1926)). Here the Court elaborated its fine distinction between good and bad trusts, and said:

> The law, however, does not make the mere size of a corporation, however impressive, or the existence of unexerted power on its part, an offense, when unaccompanied by unlawful conduct in the exercise of its power.

Thus the heavy hand of the courts paralyzed the enforcement of the antitrust laws. During the 40 years after their enactment an average of one person per year was imprisoned for violating their criminal sections, while only about $2,000,000 in fines were collected. Under the provisions for confiscation of goods shipped in interstate commerce by concerns violating the law, only 40 cartons of cigarettes were seized, and these were returned. Walton H. Hamilton, a distinguished economist and lawyer, who has made extensive studies on this subject, testified before the Senate Committee on Finance last month:

> In terms of its formal administration the number of cases is pitiful, the amount of fines assessed is pitiful, the number of people sent to jail for violation of this law is almost negligible as against the great course of the concentration of wealth which has occurred in this country in the last generation and a half.

When the final history of our times comes to be written, its most glaring paradox will be the manner in which the anti-trust laws were swerved from the course marked out by Congress and were invoked to harass the activities of those very groups they had been designed to protect. It is interesting to note that another famous Federal statute, also enacted for the protection of the weak, was used even sooner in a manner foreshadowing future events. In the case of *Toledo A. A. & N. M. Railway Co.* v. *Pennsylvania Co.* (54 Fed. 730 (1893)), Judge Taft, later to become Chief Justice of the United States held that under the Interstate Commerce Act of 1887 the Brotherhood of Locomotive Engineers could be enjoined from ordering employees to refuse to handle freight cars during the course of a strike. But the further extension of that act to the labor field was checked by the advent of the Sherman law.

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Beginning in 1893, the lower Federal courts applied the antitrust laws regularly to the activities of labor organizations. This procedure was first sustained by the Supreme Court in the case of *Loewe* v. *Lawlor* (208 U. S. 274 (1908)), where it was said that Congress "made the interdictions include combinations of labor as well as of capital." This Danbury Hatters case, it is true, involved activities which were clearly interstate in their ramifications and powerful in their effects. But in short order notice was served of the meticulous exactitude with which the actions of employees were to be surveyed. Thus in *Gompers* v. *Buck Stove & Range* (221 U. S. 418 (1911)), the Supreme Court said that the antitrust laws prohibited restraints whether occasioned "by blacklist, boycott, coercion, threat, intimidation, and whether these be made effective, in whole or in part, by act, words, or printed matter." Meanwhile the lower courts maintained their vigilance. Although peaceful picketing had come to be recognized as a legitimate and necessary incident to collective bargaining, the case of *Atchison, Topeka & Santa Fe Railway Co.* v. *Gee* (139 Fed. 582 (1905)) held that "there is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity or peaceful mobbing or lawful lynching." Certainly the rule of reason did not smile upon the aspirations of working people.

Vexed by the double frustration of its intent, an awakened Congress in 1914 passed the Clayton Act, declaring that labor organizations should be allowed to pursue their lawful and legitimate objectives, and that no injunction should be issued in a dispute between an employer and employees except when necessary to prevent irreparable injury.

But captious verbalisms by the Court soon rendered the Clayton Act as ineffectual as its predecessors. In *Duplex Printing Press* v. *Deering* (254 U. S. 443 (1921)), upholding an injunction against a secondary boycott by employees, Mr. Justice Pitney argued that Congress, in excluding from the provisions of the antitrust laws all lawful activities of labor organizations, had intended to exclude only those acts which had theretofore been lawful under the antitrust laws. This highly elliptical reasoning was reiterated in *American Steel Foundry* v. *The Tri-City Central Trades Council*, supra, declaring that the Clayton Act "introduced no new principle into the equity jurisprudence of those courts. It is merely declaratory of what was the best practice always."

Ironically enough, it was cases after the passage of the Clayton Act that marked the high-water mark of judicial hostility to labor organizations. In the Tri-City case an employee organization was denied the right to place more than one peaceful picket near the entrance to a building, and the Court added that "the name picket indicated a militant purpose, inconsistent with peaceful persuasion." In *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters Association* (275 U. S. 37 (1927)) the issue was whether a small group of craftsmen might refuse to work upon stone shipped into the State from quarries in another State where non-union labor was employed. A secondary boycott had already been declared legal by high courts in New York and California. *Bossert* v. *Dhuy* (221 N. Y. 342 (1917)) and *Pierce* v. *Stablemen's Union* (156 Calif. 70 (1909)). But the Supreme Court found a violation of the antitrust laws and sustained

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an injunction. The voice of Mr. Justice Brandeis was heard in protest:

> The Sherman law was held, in *United States* v. *The United States Steel Corporation*, to permit capitalists to combine in a single corporation 50 percent of the steel industry of the United States, dominating the trade through its vast resources. The Sherman law was held in *United States* v. *The United Shoe Machinery Co.*, to permit competitors to combine in another corporation practically the whole shoe-machinery industry of the country, necessarily giving a position of dominance over shoe manufacturing in America. It would, indeed, be strange if Congress had by the same action willed to deny to members of a small class of workmen the right to cooperate in simply refraining from work, when that course was the only means of self-protection against a combination of militant and powerful employers.

While the courts were thus turning the heavy batteries of the antitrust laws against the activities of employees, they were spiking the statutes that Congress and the States framed expressly to protect these groups. In *Truax* v. *Corrigan* (257 U. S. 312 (1912), an Arizona statute forbidding the issuance of a labor injunction except to prevent irreparable injury was declared unconstitutional by the Supreme Court. Mr. Justice Brandies, accompanied by Justices Holmes and Pitney, dissented in the following language:

> It was urged that the real motive in seeking the injunction was not ordinarily to prevent property from being injured nor to protect the owner in its use, but to endow property with active, militant power which would make it dominant over men. In other words, that under the guise of protecting property rights, the employer was seeking sovereign power.

In *Adair* v. *United States* (208 U. S. 161 (1907), over the dissents of Mr. Justice Holmes and Mr. Justice McKenna, a statute seeking to outlaw the "yellow dog" contract was declared unconstitutional. Seven years later, when the State of Kansas tried to achieve the same result, it was thwarted by *Cooperage* v. *Kansas* (236) U. S. A (1914). It was in the **[7567]** latter case that Mr. Justice Holmes supported Justice Day and the then Associate Justice Hughes in saying:

> In present conditions a workman not unnaturally may believe that only by belonging to a union can he secure a contract that shall be fair to him. * * * If that belief, whether right or wrong, may be held by a reasonable man, it seems to me that it may be enforced by law in order to establish the equality of position between the parties in which liberty of contract begins.

ECONOMIC BACKGROUND: INDUSTRIAL CONCENTRATION AND THE DEPRESSION

These cases which I have cited are not mere records of mock trials in moot courts. They are the external evidence of sweeping political and economic developments completely out of line with our professed desires to make opportunity equally available to all.

The fragile resistance of the antitrust laws did nothing to prevent the compounding of business into larger and larger units. In 1909 there was one small enterprise or manufacturing establishment for every 250 people in the Nation; by 1929 there was only one for every 900 people. In 1904, over 50 percent of the manufacturers in the United States were small enterprisers each producing less than $20,000 worth of goods per year. By 1929, these small enterprisers had shrunk in number to 32 percent of the total. During the same span of time, producers of goods valued at $100,000 or more per year

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rose from 16.9 percent of the total to 31.5 percent. And while only one-quarter of the workers in America were employed by million-dollar-a-year concerns in 1904, about three-fifths of the workers were employed by such concerns in 1929.

These technological changes doubled the productive capacity of the average worker between 1919 and 1933. In manufacturing alone, they increased his hourly product by 71 percent. They opened up new vistas of comfort and security to the average man. But despite reassuring discourse about profit sharing and employee participation in industry, the increasing size of business brought concentration of wealth in geometric ratio. By 1929, 200 huge corporations owned one-half of our total corporate wealth. Two years later, 100 general industrial corporations out of a total of 300,000 controlled one-third of the general industrial wealth of the Nation. As a natural corollary, the wage earners' share in the product created by manufacturing has declined steadily for nearly a century. Standing at 51 percent in 1849, it fell to 42 percent in 1919 and to 36 percent in 1933. The isolation of the individual worker has been reflected glaringly in the distribution of the Nation's goods.

The tremendous disparity between the few and the many became most pronounced in that glittering era which we regarded as the zenith of American prosperity. Between 1922 and 1929 the real wages of employees increased by slightly less than 10 percent. But during the same period industrial profits rose by 86 percent, while in the shorter span from 1926 to 1929 dividend payments mounted by 104 percent.

If we had succeeded in providing the minimum requirements of health and decency for every deserving person in the United States, we might have said that the maldistribution of income was a fair price to pay for our industrial efficiency. But we know that we suffered from the prevalence of poverty in a land of plenty. In 1929, 6,000,000 families, or more than 21 percent of our total population, had incomes of less than $1,000 per year. About 12,000,000 families, or more than 42 percent of the total, earned less than $1,500 yearly. Sixteen million families, or 60 percent of the people, had annual incomes below the $2,000 per year necessary for the basic requirements of health and decency. And nearly 20,000,000 families, constituting 71 percent of all America, received less than $2,500 a year. At the same time, in the highest income bracket, one-tenth of 1 percent of the families in the United States were earning as much as the 42 percent at the bottom. It is not surprising that in *America's Capacity to Consume*, the most complete study of family income ever presented to the general reader in this country, the statement is made without equivocation that during the past decade "inequality in the distribution of income has been accentuated."

Not only the preachments of moralists but also the teachings of economists have proved that this injustice wrought its hardships upon those who were temporarily favored as well as those who had been permanently neglected. The low level of income prevented the vast majority of consumers from draining the market of its flood of goods. This was particularly serious in an age of mass production, which had built 21,000,000 automobiles and over 20,000,000 radio sets. At the same time, the extraordinary concentration of income placed excessive

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savings in the hands of a few. While 60 percent of the families in America contributed only 1.6 percent to the total savings of the country, 2.3 percent of all families contributed 66⅔ percent to all savings, and 60,000 families at the top of the economic ladder saved almost as much as 25,000,000 families on the lower rungs. Corporate surpluses rose from $8,500,000,000 in 1923 to $16,000,000,000 in 1929. These accumulations of the few sought outlet through investments in plant facilities. Contrasted with the 10-percent rise in wages between 1922 and 1929, the production of machinery increased 91 percent and of capital equipment 70 percent. Production mounted beyond any possibilities of market absorption.

For a short while we staved off inevitable disaster by the pipe dream of installment selling and by lending Europe money with which to buy our own products. But when the domestic market finally closed to further investment, and foreign trade collapsed because our own people had no money with which to buy European goods, the crash came.

This thesis, which places the failure of purchasing power at the center of all explanations of depression, has long received recognition. It has been further substantiated this year in a stimulating book entitled *The Formation of Capital*, by Dr. H. G. Moulton. This volume states:

> The base of the economic pyramid is the production of consumption goods. The demand for plant and equipment is derived from the demand for consumption goods * * * A slight shrinkage at the base of the pyramid very nearly eliminates the top * * * The primary need is a larger flow of funds through consumptive channels.

During 4 long years after the depression came we clung to the same policies which had brought the calamity and which were prolonging its ravages. While the level of wages dropped 60 percent between 1929 and 1932, property income fell only 29 percent. The remarkable report of the Research and Planning Division of the National Recovery Administration shows that while wages stood at 44 percent of the 1926 level in 1932, and the national income at only 62 percent of that level, dividend payments remained as high as 142 percent of that level. And day by day the downward spiral gained in momentum.

POLICY OF THE RECOVERY PROGRAM AND SECTION 7 (A) OF THE N. I. R. A.

It was only when over 15,000,000 people were unemployed, when banks were closed, when business was uprooted, and when our whole economic system hung perilously on the precipice, that we embarked upon a new program. This new program was projected in terms of recovery and reform. It was designated not merely to set the forces of revival in motion, but, above all, to eradicate permanently the evils that had done so much harm in the past.

The first hypothesis was that the interpenetration of all industries throughout the country, the nonconformity of economic organization to State lines, and the deep-seated and wide-spread character of the national calamity, made Nationwide action essential. For the purpose of rationalizing production, outlawing cutthroat competition, and bringing order into the distribution of goods, not only were the antitrust laws in part suspended but the Government itself embarked

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upon the diametrically opposed policy of stimulating coast-to-coast cooperation among business men. It was thought that in this manner a permanent equilibrium of the various factors in industry might be maintained.

In addition, there was a second phase of the program which struck at the very core of the depression. Congress determined to fix wages and hours at a level that might, by reemployment and higher pay, spread adequate purchasing power among the masses of consumers and thus prime the **[7568]** pump of business. Equally in the foreground was the intent to insure a decent measure of security and comfort to those who worked, while protecting the fair-minded employer from the cutthroat tactics of the exploiting few.

But the Government never for a moment proposed to set up a benevolent despotism, or to extend its arm into every nook and cranny of private business. It did not contemplate regulation of every scale of wages or supervision of every schedule of hours. Acting in an emergency, it desired only to create a solid foundation upon which might be built the mutual efforts of a revived industry and a rehabilitated labor. And if industry and labor were to act in unison, it was clear that they would need equal opportunities for intelligent and effective action. Just as industry was organized, so labor was to be allowed to organize. It was for this purpose that section 7 (a) was written into the National Industrial Recovery Act and reinforced last June by Public Resolution No. 44, providing for the election of representatives for the purpose of collective bargaining.

I think it may be safely said that whatever controversy now rages as to the wisdom of many phases of the recovery program, and of the National Industrial Recovery Act in particular, there is practically unanimous agreement in Congress that section 7 (a) was sound in inception, and that the right of employees to organize and bargain collectively through representatives of their own choosing should be safeguarded at all times. If Congress recognized that right for decades, Congress must shoulder the responsibility to protect it now that employers are more united than ever before in trade associations blanketing the entire country. The developments of the past two years have not given employees any guaranties to which they were not entitled. But the events of the past two years have intensified the social necessity of protecting these guaranties against repudiation.

THE BREAK-DOWN OF SECTION 7 (A) AND ITS ECONOMIC CONSEQUENCES

Nor is there any disagreement about the fact that section 7 (a) has collapsed. General Johnson, the first Administrator of the National Industrial Recovery Act, in testifying last month before the Finance Committee of the Senate, said:

> I think section 7 (a) has substantially failed of its original purpose.

Mr. Francis Biddle, the brilliant Chairman of the National Labor Relations Board, on the same occasion referred to "the emptiness of a law which we know cannot be enforced." A very recent and exceedingly comprehensive study of the National Recovery Administration by the Brookings Institution says:

> Section 7 of the Recovery Act is uncertain in purpose, vague in contents, and ambiguous in language.

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This break-down of section 7 (a) has driven a dagger close to the heart of the recovery program. It was intended that the codes should be formulated with the "united action of labor and management." But with labor denied the opportunity to organize and bargain collectively, practically all of the codes have been conceived and drafted and presented for governmental approval by employers alone. This means that in the original formulation of the labor provisions no less than the trade practices, industry wrote the ticket. Labor came into the picture, not as the genuine party in interest that it should have been, but merely through the indirect representation of the Labor Advisory Board, an organ with no actual authority and with no bargaining power comparable to that of the trade associations.

The results of this defect are well illustrated by the difference between the normal run of codes and the few special codes formed by a process of collective bargaining. The normal codes usually provide a 40-hour week, while the special codes descend frequently to a 36- or 35-hour week. The special codes, such as in the coal, needle, and building trades, provide fairly scientific minimum-wage levels for the various skills, while the normal codes are generally filled with vague and uncertain exemptions and exceptions which make enforcement difficult and remove much of the legal force from the minimum-wage rates.

One specific example is particularly telling. The tobacco industry is one of the most profitable in the country; but since it has allowed collective bargaining no place, the increase in the average weekly wage between 1933 and 1934 was only 75 cents. But in the women's clothing industry, where section 7 (a) has been an actuality, the advance in pay was $3. The average weekly earnings during the last year in the cigarette trade were $11.84, in the women's clothing trade $18.82.

The cumulative effects of these shortcomings are reflected in economic tendencies at the present time. Unemployment is as great as it was a year ago. Average weekly hours of work, which stood at 37¼ when the codes were established in the fall of 1933, stand at 37½ today. The real income of the individual worker employed full time is less than in March 1933. The average worker's income in 1934 was $1,099, or $813 less than the amount required to maintain a family of five in health and decency. The realignment of profits and wages, which we contemplated so confidently in the spring of 1933, has not taken place.

In December 1934, pay rolls registered only 60 percent of the 1926 level, while dividend and interest payments were fixed at 150 percent of that level. Total wages have risen only 28 percent in the past 2 years, while 840 large companies have increased their profits from $471,000,000 in 1933 to $673,000,000 in 1934, a gain of 42 percent. Net profits of 1,435 manufacturing and trading companies increased from $640,000,000 in 1933 to $1,071,000,000 in 1934, or 64 percent, while their annual rate of return rose from 2.7 percent to 4.5 percent.

Furthermore, the history of the past 2 years makes it clear that failure to maintain a sane balance between wages and industrial returns will be attended by the same fatal consequences as in the past. The rise of business activity to 89 percent of normal in the precode booms of April and July 1933 collapsed after July because no adequate purchasing power had been built up to sustain it. The rise to 80 percent of normal in April and May 1934 rested on a surer foundation

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because of the increase in purchasing power provided through reemployment in the fall of 1933 and through public spending.

If the more recent quickening of business activity is not supported by rises in wages, either we shall have to sustain the market indefinitely by huge and continuous public spending or we shall meet the certainty of another collapse. With the evil and the remedy in such clear relief, Congress cannot hesitate to atone the error of allowing section 7 (a) to languish.

WEAKNESSES IN THE PRESENT LAW REGARDING COLLECTIVE BARGAINING

A study of the weaknesses in the existing law brings the conviction that the remedy is neither obscure nor unattainable. The patent ambiguity and excessive generality of section 7 (a) has led to a proliferation of interpretations and counterinterpretations. Consequently both employers and employees have been denied their basic right to a clear and certain law.

Turning at once from substance to procedure, the greatest difficulty with section 7 (a) has been that the present National Labor Relations Board, the cardinal agency for interpreting it, has not been vested with enforcement powers. The Board, after hearing cases, may refer them with recommendations to the National Recovery Administration. As was demonstrated in the recent Colt case, it is that administration rather than the Board which exercises final discretion in determining whether the Blue Eagle shall be removed or whether Government contracts shall be canceled.

Of course, the National Recovery Administration has adequate enforcement powers. But everyone knows that the whole tendency of that organization has been toward conciliation and compromise with industry in order that codes of fair competition may be administered smoothly and continuously. This approach may be laudable in dealing with standards of fair competition that have been written and proposed by industry itself. But it is totally unsuited to the enforcement of section 7 (a), which is a mandate of Con- **[7569]** gress, which becomes a crucial issue in those very cases where it is most flagrantly challenged, and which, like all analogous laws of Congress, must be vindicated by a judicial process. The confusion of the voluntarily submitted fair-practice provisions with section 7 (a) has put the Recovery Administration in the untenable position of conciliator and prosecutor at once. Not only has section 7 (a) been lost in the shuffle but the Recovery Administration itself has suffered from the misplaced burden. And this difficulty has been aggravated because, under present conditions, section 7 (a) is applicable only where there is a code of fair competition, which constantly puts recalcitrants in the position where they can threaten to surrender their codes in case section 7 (a) is enforced against them.

As an alternative, the present National Labor Relations Board may refer its recommendations to the Department of Justice for enforcement. But since the Board has no power of subpoena or investigation except in connection with elections, the records which it builds up are based in most cases upon the testimony of complainants alone, supplemented at best by the testimony of such witnesses

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as the defendant voluntarily presents. This makes it necessary for the Department of Justice in any event to make further investigations before bringing suit; and if the Department brings suit at all, it must commence entirely *de novo* in the courts, with the defendant having 30 days to answer, or moving to dismiss, or applying for a bill of particulars. Thus is defeated the very purpose of an administrative agency, which is to provide specialized treatment of the factual aspects of a specialized controversy.

Weak as it is, the present National Labor Relations Board has been subjected, in addition, to the corroding influence of various industrial boards, dealing according to their own lights with the same subject matter. At present from 13 to 15 boards have been established to handle 7 (a) cases, and over none of these has the national board jurisdiction, either as to fact or as to law. Since there are now over 100 codes which provide for the establishment of industrial boards, there exists the constant threat that dispersion of authority will transcend all reasonable bounds.

Quite aside from all question of scattered responsibility, these industrial boards are essentially unsuited to the handling of 7 (a) cases. Partisan in composition, living in an atmosphere of compromise and conciliation, they are well designed to adjust wage and hour controversies in accordance with the varying standards of different localities. The success of labor before an industrial board depends upon the strength of labor in that particular area. But section 7 (a) was written by Congress to protect the weak who could not protect themselves, and it was intended for universal application, not universal modification. The major effect of leaving its enforcement to a variety of industrial boards is to give the least protection to those who need it most.

Last June, in order to remedy the recognized weaknesses in section 7 (a), Congress passed Public Resolution No. 44. The main purpose of that resolution was to facilitate the holding of elections by the National Labor Relations Board; but a fatal loophole has rendered its effect nugatory. In providing that election orders of the Board might be reviewed in the courts prior to the holding of the election itself, the law afforded employers a shield to ward off action indefinitely. The most revealing commentary upon the joint resolution is contained in a letter disclosed by the Senate committee investigating munitions. Written last June by a vice president of one of America's largest corporations, it says:

> My guess is that Congress will today pass the joint resolution proposed as an alternative to the Wagner bill, and that will end, for the time being, at least, many of our troubles in that respect. Personally, I view the passage of the joint resolution with equanimity. It means that temporary measures, which cannot last more than a year, will be substituted for the permanent legislation proposed in the original Wagner bill. I do not believe that there will again be as good a chance for the passage of the Wagner Act as exists now, and the trade is a mighty good compromise.
>
> I have read carefully the joint resolution, and my personal opinion is that it is not going to bother us very much. For one thing, it would be necessary, if the newly created boards are to order and supervise elections in our plants, that they first set aside as invalid the elections just completed.
>
> I do not think this can be done. If, in 1935, our elections should occur in the second half of June rather than in the first half, the board would automatically be legislated out of existence before that date.

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If they try to horn in on us in any situation in the meantime, I think we have our fences pretty securely set up. Therefore, and for other reasons, I am in favor of compromising by not opposing passage of the joint resolution. This, of course, is my own personal opinion. I have not yet had a chance to clear it with our people here.

NATIONAL LABOR RELATIONS BILL—ENFORCEMENT PROVISIONS

The present bill cures the defects in existing law. It clarifies and amplifies the provisions of section 7 (a), and it centralizes in a single permanent National Labor Relations Board the duty to protect the collective-bargaining rights of employees. The Board will, of course, have regional agencies throughout the country to handle violations initially at their source, and will be empowered to designate any existing industrial board for such purposes. In all cases, however, the findings and recommendations of these agencies will be transferred to the National Labor Relations Board for final action. After these appropriate hearings the Board will be empowered to issue orders forbidding violations of the law and making restitution to those who have been injured thereby. All such orders will be fully reviewable at the instance of any aggrieved party in the Federal courts.

The procedure set forth in this bill is so closely modeled upon other statutes, such as the Federal Trade Commission Act and the Interstate Commerce Act, that one is astounded to hear the charges circulated to the effect that this measure would sweep aside the courts and endow a new and queer kind of agency with dictatorial or arbitrary powers.

The power of the Board to hold elections is considerably clarified. An election is merely a preliminary determination of fact. There is no more reason why it should be subject to anterior court review than why a hearing should be deferred pending judicial action; but if any election is made the basis for an order of the Board related to an unfair labor practice, the whole procedure embracing the election will be fully reviewable in the appropriate Federal court.

UNFAIR LABOR PRACTICES

Let us turn now to the substantive provisions of the bill dealing with unfair labor practices. I wish to emphasize at the outset how limited these provisions are in their scope, how simple they are in their language, and how thoroughly they are grounded in long-established congressional policy.

The first unfair-labor-practice provision, in substance, forbids an employer to interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

This language follows practically verbatim the familiar principles already embedded in our law by section 2 of the Railway Labor Act of 1926, section 2 of the Norris-LaGuardia Act, section 77 (p) and (q) of 1932 amendments to the Bankruptcy Act, section 7 (a) of the National Industrial Recovery Act, and section 7 (e) of the act creating the office of the Federal Coordinator of Transportation.

Experience over a considerable period of time, however, has made it clear that these general declarations of freedom have little effect

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unless they are accomplished by a specific catalog of forbidden practices. Therefore, the succeeding four unfair-labor-practice provisions, without narrowing in any way the widest possible application of the first, enunciate with particularity the concrete acts which have been the most fertile source of trouble in the past.

THE PROBLEM OF THE COMPANY UNION

The second unfair-labor-practice provision deals with the so-called "company-union problem." It makes it unlawful for an employer to dominate or interfere with the formation or administration of any labor organization, or contribute financial or other support to it.

[7570] The intent here is to bring about in industry generally the same conditions which Congress decreed for the railways and businesses under trusteeship by the 1933 amendments to the Bankruptcy Act, the act creating the office of the Federal Coordinator of Transportation, and the 1934 amendments to the Railway Labor Act.

Anyone familiar with these laws will recognize at once that there is nothing in the pending bill which promotes a union monopoly, which places the stamp of governmental favor upon any particular type of union, or which outlaws the socalled "company union", if by that term is meant simply an entirely free and independent organization of workers who through their own volition confine their cooperative activities to the limits of one company. Nor is there anything in the bill which interferes with the benefits of pension or recreation plans when such benefits are extended equally to all employees, without discrimination tending to encourage or discourage union membership. The bill intends merely that those agencies designed to represent the workers for purposes of collective bargaining shall be free from the domination or even the interference of the other party.

The primary evil of the organization which is dominated or interfered with by the employer is that, sometimes because of express prohibitions, more often because of its intrinsic composition, it is not well suited to extend its cooperative activities beyond the bounds of a single employer unit. A thorough study of this subject has just been made by the Twentieth Century Fund, backed by an impressive array of scholars, employers, and professional men. It shows that even different company unions of the same employer rarely work in unity, and almost never is there even a loose and informal contact between company unions of different employers.

Limitations such as these run counter to the very core of the new-deal philosophy. Business men are being allowed to pool their information and experience in vast trade associations in order to make a concerted drive against the evil features of modern industrialism. If employees are denied similar privileges, they not only are unable to uphold their end of the labor bargain but, in addition, they cannot cope with any issues that transcend the boundaries of a single business. And under modern industrial conditions problems of wages and hours are regional or even national in scope. Order must exist everywhere if it is to exist at all.

In the second place, the employer who dominates or interferes with his workers sometimes, either by express provisions or more likely by subtle economic pressure, limits his employees' choice of

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representatives to those who work for him. A worker may be a complete master of his tools, but as a representative he is not an expert in industrial relations, and is likely to be entirely unable to take advantage of legitimate opportunities based upon knowledge of the labor market and general business conditions. More important, only representatives who are not subservient to the employer with whom they deal can act freely in the interest of the workers. Simple common sense tells us that a man does not possess this freedom when he bargains with those who control his source of livelihood.

The third defect of the company-dominated union is that it is supported, in whole or in part, by the employer. I cannot understand how those so well schooled in the doctrines of Americanism can sanction a practice whereby the person on one side of the bargaining table pays the attorney of those with whom he deals. Collective bargaining becomes a mockery when the spokesman of the employee is the marionette of the employer.

These few practices by no means cover the whole range of the abuses that constitute interference. The undue influence which the employer exerts over the supposedly free agent of his workers may take other forms. It may consist in employer interference with the formation of the constitution or bylaws of a labor organization. The essence of interference is that the workers' organization, instead of being absolutely free and independent as an organic entity, is subjected in some way to the employer's will.

The recent study to which I have referred affords ample evidence that the company union is the mere creature of the employer. Out of 125 company unions investigated, the plans for 53 of them were installed by executive order on the part of the employer. Only 22 of them were ratified by a representative vote of the employees. In only 10 cases out of 72 were the employees alone free to change their plan.

The severest indictment of these unions imposed from above is that they have blossomed forth since the passage of the very act which was designed to give workers full freedom of organization. According to the National Industrial Conference Board, the number of workers recruited into company unions rose from 432,000 in 1932 in 1932 to 1,164,000 in 1933, representing a gain of 169 percent. More than 69 percent of the company unions now in existence have been inaugurated in the brief period since the passage of the Recovery Act.

Contrary to the argument that the company union has the virtue of insuring industrial peace, we know that this open entry of employers into the field of active organization of workers promotes strife and discord. Men versed in the tenets of freedom become restive when not allowed to be free. The sharp outbreaks of economic warfare in various parts of the country to a large extent attest the bitterness of feeling when company unionism raises its head. Most impartial students of industrial problems agree that the best records of mutual accomplishments have been made where the sham union has been driven from the scene, and where workers are free men in fact as well as in name.

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PROBLEMS OF THE CLOSED SHOP

While outlawing the organization that is interfered with by the employer, this bill does not establish the closed shop or even encourage it. The much-discussed closed-shop proviso merely states that nothing in any Federal law shall be held to illegalize the confirmation of voluntary closed-shop agreements between employers and workers. This insertion is necessary to prevent repetition of those mistaken interpretations which have held that Congress intended to outlaw the closed shop when it enacted section 7 (a) of the Recovery Act.

I hold no brief for or against the closed shop, but there are some who believe that it is a device which at times may be necessary to advance and preserve the living standards of employees. It is legal in many States, and there is no reason why Congress should make it illegal in those places where public policy now sustains it.

The virulent propaganda to the effect that this bill encourages the closed shop is outrageous in view of the fact that in two respects it actually narrows the now-existing law in regard to the closed-shop agreement. In the first place, while today an employer may sign a closed-shop contract even with a minority group, the bill provides that he shall be allowed to negotiate such an agreement only with an organization which represents the majority of employees in the appropriate collective bargaining unit covered by such agreement when made. Secondly, the bill is extremely careful to forestall the making of closed-shop agreements with unions that are interfered with or dominated by the company, or with any organization that has been tainted at any time in the past by practices which are now declared to be unfair. The closed-shop agreement is to be allowable only when an organization has been free from its inception.

The third unfair-labor-practice provision makes it illegal for an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

This provision is merely a logical and imperative extension of that section of the Norris-La Guardia Act which makes the "yellow dog" contract unenforceable in the Federal courts. If freedom of organization is to be preserved the employees must have more than the knowledge that the courts will not be used to confirm injustice. They need protection most in those very cases where the employer is strong enough to impress his will without the aid of the law. And it is perfectly **[7571]** obvious that unfair pressure may be exercised by discrimination during employment as well as by actual discharge.

The fourth unfair-labor-practice provision, forbidding discharge or discrimination because an employee has filed charges or given testimony under this measure, is self-explanatory.

THE DUTY TO BARGAIN COLLECTIVELY

The final unfair-labor-practice provision makes it illegal for an employer to refuse to bargain collectively with the representatives of his employees.

Most emphatically this provision does not imply governmental supervision of wage or hour agreements. It does not compel anyone

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to make a compact of any kind if no terms are arrived at that are satisfactory to him. The very essence of collective bargaining is that either party shall be free to withdraw if its conditions are not met. But the right of workers to bargain collectively through representatives of their own choosing must be matched by the correlative duty of employers to recognize and deal in good faith with these representatives. The Government itself is held up to ridicule when the elections which it supervises are rendered illusory by failure to acknowledge their results. And needless to say, such a contradictory course generates perpetual discontent and strife.

Just what the duty to bargain collectively implies was clearly set forth by the present National Labor Relations Board in the Houde Engineering Corporation case, decided on August 30, 1934. There the Board said:

> Without this duty the right to bargain would be sterile * * * The incontestibly sound principle is that the employer is obligated by the statutes to negotiate in good faith with his employee's representatives; to match their proposals, if unacceptable, with counterproposals; and to make every reasonable effort to reach an agreement.

The sound result which the Labor Board reached by interpretation of a vague law should be confirmed and protected by a clear definition of congressional policy.

PRINCIPLE OF MAJORITY RULE

Further to facilitate the procedure of collective bargaining, the bill embraces the principle of majority rule. It states that—

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

Collective bargaining is not an artificial procedure devoted to an unknown end. Its object is the making of agreements which will stabilize employment conditions and promote fair working standards. It is well nigh universally recognized that it is practically impossible to apply two or more sets of agreements to one unit of workers at the same time, or to apply the terms of one agreement to only a portion of the workers in a single unit. For this reason, collective bargaining means majority rule. This rule is conducive not only to agreements, but also to friendly relations. Workers find it easier to approach their employers in a spirit of good will if they are not torn by internal dissent. And employers, wherever majority rule has been given a fair chance, have discovered it more profitable to deal with a single group than to be harassed by a constant series of negotiations with rival factions.

Majority rule makes it clear that the guaranty of the right of employees to bargain collectively through representatives of their own choosing must not be misapplied so as to permit employers to interfere with the practical effectuation of that right by bargaining with individuals or minority groups in their own behalf after representatives have been picked by the majority to represent all.

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At the same time, majority rule recognizes minority rights. It does not ever imply that any employee can be forced to join a union, except through the traditional method of a closed-shop agreement with the employer. And since, in the absence of such an agreement, the bill specifically prevents discrimination against any one either for belonging or for not belonging to a union, the majority will be quite powerless to make an agreement more favorable to themselves than to the minority who remain without. In addition, the bill preserves the right of any individual or minority group to present grievances to its employer.

Anyone who analyzes the problems and who studies the history of industrial relations will be amazed at the current opposition to majority rule. Certainly it cannot be claimed that the rule is lacking solid precedent. It has been applied regularly by governmental agencies and recognized repeatedly by laws of Congress. It was followed by the National War Labor Board created by President Wilson in the spring of 1918. It has been applied consistently by the Railway Labor Board created by the Transportation Act of 1920. The 1934 amendments to the Railway Labor Act provided for it. Public Resolution No. 44, approved last June, in that it provided for elections, must have contemplated majority rule.

If we turn from governmental experience to private practice, what do we find? The platform adopted by the Congress of American Industry and the National Association of Manufacturers on December 5 and 6, 1934, and they are the ones who now oppose majority rule for workers, provides:

> Under appropriate safeguards, the approved competitive practices and prohibitions submitted by the properly defined majority of a group, trade, or industry shall be binding upon the minority.

The experience of the National Labor Relations Board has been that the very employers who decry majority rule today insisted upon majority rule alone when they were in control of the situation through their dominance over a company union. The animus behind the crocodile tears now being shed for the welfare of minorities was laid bare by the liberal dean of the Wisconsin Law School, Lloyd K. Garrison, a former Chairman of the National Labor Relations Board. Testifying before the Committee on Education and Labor upon this bill, he said:

> It seemed to me last summer, as I sat on the Board and listened to these cases, quite evident that the opposition to this rule came down simply to this, that the employer who opposed the rule merely wanted to avoid doing any collective bargaining at all so long as he could keep his responsibility diffused. So long as he could say, "I will bargain first with this group, then I will bargain with that group, and then I will run back to the first and see what they think about the proposals", and so on ad infinitum, he would end up by reaching no collective agreement at all. And that is why the majority rule is opposed.

Mr. Garrison has placed the matter in a nutshell. He has made it clear that democracy in industry must be based upon the same principles as democracy in government. Majority rule, with all its imperfections, is the best protection of workers' rights, just as it is the surest guaranty of political liberty that mankind has yet discovered.

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CONSTITUTIONALITY

It is appropriate that some reference should be made to the constitutional problems raised by this bill. There are two broad questions involved: First, does the regulation of the employer-employee relationship as herein provided violate due process of law; and, secondly, can Federal jurisdiction over this relationship be sustained under the commerce clause?

The authority of Congress to guarantee freedom of organization, to prohibit the company-dominated union, and to prevent employers from requiring membership or nonmembership in any union, has been completely upheld in *Texas & New Orleans Railroad Co.* v. *Brotherhood* (281 U. S. 548 (1930)). This was a suit by a labor union to restrain the railroad from interfering, in violation of the Railway Labor Act of 1926, with the right of its employees to self-organization and the designation of representatives. The decree of the lower court had provided that the railroad company should: first, completely disestablish its company union; second, reinstate the Brotherhood as representative until the employees by secret ballot should make a choice; third, restore to service and to stated privileges certain employees who had been discharged for activities in behalf of the Brotherhood. The Supreme Court, with Chief Justice Hughes writing for a unanimous Court sustaining the decree, said:

[7572] The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers concerning rates of pay and conditions of work. * * * Congress was not required to ignore this right of the employees, but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interference with freedom of choice.

Thus the Supreme Court sustained a decree prohibiting, in substance, all except the last of the unfair labor practices listed in this bill, and it is particularly significant that this decree was based upon a law containing only the first of these practices. Brushing aside the much-criticized earlier cases which had declared the prohibition of the "yellow dog" contract unconstitutional, Chief Justice Hughes said:

The petitioners invoke the principle declared in *Adair* v. *United States* (208 U. S. 1, 61) and *Coppage* v. *Kansas* (236 U. S. 1), but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers but at the interference with the right of employees to have representatives of their own choosing. As the carrier subject to the act has no constitutional right to interfere with the freedom of the employees in making their selections they cannot complain of the statute on constitutional grounds.

When we realize that this prevailing and unanimous opinion rendered by the Chief Justice followed precisely the line of reasoning that he had followed when dissenting in the Coppage case, and that the two are really identical in principle, we can have no doubt that Coppage against Kansas and Adair against United States have been overruled.

It is true that the Texas case involved the interests of railway workers. But its decision upon the question of due process is equally applicable wherever congressional jurisdiction over interstate com-

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merce can be established. Let us now examine the grounds for Federal jurisdiction.

A vast number of strikes have arisen in protestation against the denial of the rights guaranteed by section 7 (a) of the Recovery Act and reaffirmed by the present bill. Certainly, many similar outbreaks will be prevented if these rights are secured, for whenever given a fair trial the protection of collective bargaining has promoted industrial peace. And that strikes burden commerce cannot be denied, in view of the recognition of this fact by such landmarks of our law as *In re Debs* (158 U. S. 564), *Duplex Printing Press Co.* v. *Deering* (254 U. S. 443), *American Steel Foundries* v. *Tri-City Central Trades Council* (257 U. S. 184), *Coronado Coal Co* v. *United Mine Workers* (268 U. S. 295), and *Bedford Cut Stone Co.* v. *Stone Cutters Association* (274 U. S. 37). Moreover, the courts which have enunciated so broad an interpretation of commerce when the result has been to frustrate the attempts of wage earners to better their economic conditions by collective action, will be constrained to take an equally broad view in order to diminish strikes by preventing the unfair labor practices which incite them.

Those cases under the antitrust laws which have been cited for the proposition that the Federal Government cannot deal with the employer-employee relationship are not applicable. For where the courts have refused to enjoin strikes under the antitrust laws, it has not been for lack of constitutional power but because the burden upon commerce was not deemed such as the antitrust laws intended to prohibit. Statutory construction of these laws fixed the boundaries of equity jurisdiction. But the Federal Government has the power under the Constitution to prevent any burden whatsoever upon interstate commerce. And there can be no doubt that Congress intends this power to be exercised in full to prevent unfair practices that cause or threaten to cause even the slightest burden.

It is clear that these practices may be enjoined even before the strike occurs. As Chief Justice Taft said in the first *Coronado case* (259 U. S. 344 (1922)):

> If Congress deems certain recurring practices, although not really part of interstate commerce, likely to obstruct, restrain, or burden it, it has the power to subject them to national supervision or restraint.

I want to emphasize ever more strongly the constitutional power and the intent of Congress to prevent these unfair labor practices even where they do not lead or threaten to lead to strikes. As economic conditions have changed, courts on the whole have shown an increasing willingness to recognize that unsound business practices are a direct burden upon the regularity and volume of commerce. One example is the line of cases dealing with unfair competition under the Federal Trade Commission Act. The principle is well stated in another connection in *Chicago Board of Trade* v. *Olsen* (262 U. S. 1 (1922)), upholding Federal regulation of future sales on grain exchanges, an activity in itself purely local. The Court said:

> The question of price dominates trade between the States. Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it. For this reason Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided.

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In effect upon commerce, wages are indistinguishable from prices. In fact, each is significant only in terms of the other. When wages sink to low levels, the decline in purchasing power is felt upon the marts of trade. And since collective bargaining is the most powerful single force in maintaining and advancing wage rates, its repudiation is likely to intensify the maldistribution of buying power, thus reducing standards of living, unbalancing the economic structure, and inducing depression with its devastating effect upon the flow of commerce.

In the more recent case of *Appalachian Coals, Inc.*, v. *United States* (288 U. S. 344 (1933)), Chief Justice Hughes said:

> The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts, and communities dependent upon profitable production are prostrated, the wells of commerce go dry.

This statement will long be a beacon light to guide those who are seeking to make our law consonant to the needs of our social and economic life. While the pending bill of course does not intend to go beyond the constitutional power of Congress, as that power may be marked out by the courts, it seeks the full limit of that power to prevent these unfair labor practices. It seeks to prevent them whether they affect interstate commerce by causing strikes, or by destroying the equality of bargaining power upon which the flow of commerce depends, or by occurring in interstate commerce.

The recent decision in the Weirton case is based upon Judge Nields' finding that the activities of the Weirton company did not interfere with the freedom of employees to organize, as guaranteed by section 7 (a) of the Recovery Act. It seems clear that this decision is far out of line with that of the United States Supreme Court in the Texas case (supra), which held that activities similar to those at Weirton were illegal under the Railway Labor Act of 1926, an act no more specific in its terms than section 7 (a). Not a single lawyer with whom I have talked has been able to explain Judge Nields' failure not only to distinguish, but even to refer to the Texas case. And even if it were to be conceded that Judge Nields correctly interpreted section 7 (a), his decision merely emphasized the need for strengthening that section and creating a permanent administrative tribunal, versed in the complexities of labor relations, to deal with such matters.

Since Judge Nields found that section 7 (a) did not outlaw the activities complained of at Weirton, his discussion of the constitutionality of that section was pure dictum. I cannot believe that this decision of a single district judge as to the extent of the power of Congress to regulate interstate commerce will weigh very heavily with this Senate, particularly since his limited conception of interstate commerce, while in line with many early decisions of the United States Supreme Court, is clearly at odds with later decisions which **[7573]** I have discussed and which are more responsive to the changing character of our national economic life.

It is even clearer that the recent decision of the Supreme Court in the Railway Pension case has absolutely no applicability to this bill. That case held, rightly or wrongly, that the retirement of superannuated workers had no recognizable relationship to the efficiency of interstate transportation. The opinion of Mr. Justice Roberts

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expressly distinguished the situation covered by the Texas case, supra, where a statute was designed to promote interstate commerce by preserving industrial peace.

PROMOTION OF INDUSTRIAL PEACE

This bill is designed to promote industrial peace. The bitterness and the heavy cost of economic conflicts between employers and workers in this country constitute a long and tragic story. Between 1915 and 1931 there were 4,856 strikes, involving the surrender of 2,795,000 jobs and the loss of 72,957,000 working days. At least $1,000,000,000 per year have been wasted because of these controversies.

This toll of private warfare cannot be measured by statistics alone, for it places the taint of hatred and the stain of bloodshed across the pathway to amicable and profitable business dealings. Nor can we be satisfied to allow these troubles to proceed unchecked to their bitter conclusion. A do-nothing procedure leaves the temporary victor as exhausted as the temporarily vanquished, and sows the seeds for recurrent strife when the competitors have rallied from their efforts.

One method of approach to the problem of industrial peace would be for the Government to invoke compulsory arbitration, or to dictate the terms of settlement whenever a controversy arises. Where this procedure has been tried in European nations it has met with only questionable success. In any event, it is so alien to our American traditions of individual enterprise that it would provoke extreme resentment and constant discord.

It is clear that in this country peace must be based upon reason rather than upon force. We have cherished always the ideal of employers and workers meeting together with friendly and open minds in order that they may exchange views and arrive at solutions based not upon compulsion but upon mutual concessions and mutual benefit. This may be termed the method of conference, of give and take, of free cooperation.

The best example of the conference or voluntary method of ironing out disagreements is the railway industry. Because of the vital connection between steady transportation and the very lives of our eople, the Government early took steps to set up machinery for the peaceful adjustment of railway-labor disputes. The central idea of all these efforts has been to promote the making of collective agreements between employers and workers without exercising any compulsion upon either side.

In seeking these ends, however, the Government did not rely upon a policy of complete laissez faire. It soon saw the necessity of establishing by law the underlying conditions from which agreements might arise. It protected employees in their right to organize and bargain collectively. It applied to the railway industry the principle of majority rule, and it abolished the union that was interfered with or financed by the company.

The application of these rules of fair play yielded the finest results. Not once since 1894 has serious strife upon the railroads hardened our arteries of trade. It was to be expected that such a record of success

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would be emulated elsewhere, and when our entry into the World War made it imperative to cement the bonds of cordiality between employers and workers the War Labor Board was established. This Board immediately applied the principles that governed the railway industry. It was remarkable that not a single strike or lock-out in defiance of an award of the War Labor Board occurred until after the armistice; and the United States was the only belligerent unvexed by major labor disturbances.

It is a matter of record that one of the most prolific causes of strikes has been the failure to apply to industry generally the rules of industrial democracy underlying the conference method. At least 25 percent of the labor disputes in recent years has resulted from denials of the procedure of collective bargaining. In regard to the steel strike of 1919, which was one of the severest and most disastrous affrays in recent history, the impartial commission of inquiry of the Interchurch World Movement said that both sides agreed that the occasion of the strike was the failure to recognize the friendly conference idea. Of the 3,655 new cases received by the regional agencies of the present National Labor Relations Board during the second half of 1934 and the first month of 1935, the issue of collective bargaining was paramount in 2,330 cases, or about 74 percent.

The pending bill is designed merely to apply to industry generally the benefits of our rich American experience. While it has been branded radical by some and ultraconservative by others, every one of its principles has been sanctioned by a long train of laws of Congress. While it has been called inopportune and hasty, it is responsive to the serious industrial disturbances of last summer, when blood ran freely in the streets and martial law was in the offing. While some think it one-sided and directed against industry, it is trained upon the solution of problems that have plagued industry as much as any other group. In its search for industrial peace combined with economic justice, it appeals to the conscience and intelligence of all those who know the history of our country and are imbued with its high ideals. In applying the healing balm of an upright, impartial, and peaceful forum to industry and labor it will benefit employers, workers, and the country at large.

During the delivery of Mr. Wagner's speech—

Mr. ROBINSON. Mr. President, I do not understand the statement of the Senator from New York that "all such orders will be fully reviewable by any aggrieved party in the Federal courts."

Mr. WAGNER. Parties to the controversy, of course.

Mr. ROBINSON. Yes; but what is meant by the term "by any aggrieved party"? I am asking for information.

Mr. WAGNER. Suppose the Board orders an election, which is held. Then a controversy arises as to who was really elected by a majority of the workers, the company making one contention, and a representative of the workers making another contention. That controversy will be heard by the Board, evidence will be taken, and then, if either party is dissatisfied with the order of the Board, based upon the supposed violation of a legal right, such party may have a review in the courts.

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Mr. ROBINSON. The point I am asking about is, What is the meaning of the words "by any aggrieved party"? The language is not clear to me.

Mr. WAGNER. The bill itself is clearer than my statement. I assume that the meaning is by parties to the controversy which is heard before the Board.

After the conclusion of Mr. Wagner's speech—

Mr. COSTIGAN. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. Murray in the chair). Does the Senator from New York yield to the Senator from Colorado?

Mr. WAGNER. I am glad to yield.

Mr. COSTIGAN. I did not hear all, but what I did hear of the able Senator's discussion of the proposed legislation deeply impressed me by its force, persuasiveness, and learning.

Is it fair to conclude that the proposed legislation will have important values for national and industrial development and peace, whether the National Industrial Recovery Act shall be continued or not?

Mr. WAGNER. Of course, I answer in the affirmative, absolutely.

Mr. COSTIGAN. Is it proper to say that the measure is designed to apply to all industries which affect commerce?

Mr. WAGNER. That is the intent.

Mr. COSTIGAN. Is it to be understood that the proposed legislation's admirable purposes are to be attained by au-**[7574]** thorized Federal investigations with a view to voluntary settlement of industrial disputes; by outlawing company unions; by the assurance of majority rule among workers organized to bargain collectively with employers; and by the maintenance of a permanent and impartial national relations board?

Mr. WAGNER. Yes; and by the prohibition of certain unfair labor practices which are enumerated in the bill and which are intended to make the worker a free man, to decide for himself whether he wants an organization, and if he wants one, what the type of that organization shall be.

Mr. COSTIGAN. With such features the proposed legislation evidently embodies some of the settled conclusions of our foremost industrial experts. The measure is clearly intended to support recommendations both of acknowledged industrial leaders in America and of America's organized labor movement. Nor are such convictions new. Almost 20 years ago they were urged as the prevailing expert judgment of those best informed on industrial problems, appearing at that time before the United States Industrial Relations Commission, which surveyed the entire field of industrial relations for a couple of years by authority of Congress and with commissioners of ability appointed by President Woodrow Wilson.

Mr. WAGNER. I thank the Senator.

Mr. MCCARRAN. Mr. President, will the Senator yield just for a clarification?

Mr. WAGNER. Yes.

Mr. MCCARRAN. I have admired the Senator's presentation. I am very favorable to his bill. What I desire to know, in keeping with the question propounded by the Senator from Colorado, is whether

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the continuation of the N. R. A. is in anywise linked with the bill now before the Senate.

Mr. WAGNER. It is not. Of course, the N. I. R. A. has section 7 (a) in it; but this bill proposes, in the first place, to define the rights of labor more clearly; and, secondly, to implement them by certain enforcement sanctions.

Mr. MCCARRAN. Just one further inquiry. Am I correct in saying that even though the N. R. A. should pass out of existence with section 7 (a) as it now stands in the N. R. A. Act, we should have all the beneficial results that might flow from section 7 (a) if we should enact the pending bill?

Mr. WAGNER. That is certainly a correct statement so far as section 7 (a) is concerned.

Mr. MCCARRAN. I thank the Senator.

[7576] SETTLEMENT OF LABOR DISPUTES

The Senate resumed the consideration of the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Mr. WALSH. Mr. President, we have now reached the stage where the committee amendments will be taken up for disposition. I therefore think a quorum call should be had.

The PRESIDING OFFICER (Mr. MURRAY in the chair). The absence of a quorum being suggested, the clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Fletcher	**[7577]**
Ashurst	Frazier	Murphy
Austin	George	Murray
Bachman	Gerry	Neely
Bailey	Gibson	Norris
Bankhead	Glass	Nye
Barbour	Gore	O'Mahoney
Barkley	Guffey	Overton
Bilbo	Hale	Pittman
Black	Harrison	Pope
Bone	Hastings	Radcliffe
Borah	Hatch	Robinson
Brown	Hayden	Russell
Bulkley	Johnson	Schall
Bulow	Keyes	Schwellenbach
Burke	King	Sheppard
Byrd	La Follette	Shipstead
Byrnes	Lewis	Steiwer
Capper	Logan	Thomas, Okla.
Caraway	Lonergan	Thomas, Utah
Carey	Long	Townsend
Clark	McAdoo	Trammell
Connally	McCarran	Truman
Coolidge	McGill	Tydings
Copeland	McKellar	Vandenberg
Costigan	McNary	Van Nuys
Couzens	Maloney	Wagner
Dickinson	Metcalf	Walsh
Donahey	Minton	Wheeler
Duffy	Moore	White

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Mr. LEWIS. Mr. President, I rise merely to reannounce the absence of the Senators whose names I have given earlier in the day, and the reasons for their not being present at the moment of this roll call.

The PRESIDING OFFICER. Eighty-nine Senators having answered to their names, a quorum is present.

[7596] SETTLEMENT OF LABOR DISPUTES

The Senate resumed the consideration of the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Mr. WALSH. Mr. President, I ask to have the first committee amendment stated, so that it may be pending before the Senate for consideration at the meeting of the Senate tomorrow.

The PRESIDING OFFICER. The first committee amendment will be stated.

CONGRESSIONAL RECORD, SENATE—MAY 16, 1935

(79 Cong. Rec. 7648)

SETTLEMENT OF LABOR DISPUTES

The Senate resumed the consideration of the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

The VICE PRESIDENT. The question is on agreeing to the first amendment reported by the committee.

Mr. MCNARY. Mr. President, I inquire if consent was granted first to consider committee amendments?

[7649] The VICE PRESIDENT. There was a unanimous-consent agreement entered yesterday that the committee amendments should first be considered; and the first committee amendment inserting in line 3, page 1, the words "Findings and" in the caption was stated. The question is on agreeing to that amendment.

The amendment was agreed to.

The VICE PRESIDENT. The clerk will continue the statement of the committee amendments.

The next amendment of the Committee on Education and Labor was, on page 1, after line 3, to strike out:

SECTION 1. Equality of bargaining power between employers and employees is not attained when the organization of employers in the corporate and other forms of ownership association is not balanced by the free exercise by employees of the right to bargain collectively through representatives of their own choosing. Experience has proved that in the absence of such equality the resultant failure to maintain equilibrium between the rate of wages and the rate of industrial expansion impairs economic stability and aggravates recurrent depressions, with consequent detriment to the general welfare and to the free flow of commerce Denials of the right to bargain collectively lead also to strikes and other manifestations of economic strife, which create further obstacles to the free flow of commerce.

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And in lieu thereof to insert:

SECTION 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of ownership and out of numerous other modern industrial conditions impairs and affects commerce by creating variations and instability in wage rates and working conditions within and between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity between production and consumption, reducing the amount of commerce, and tending to produce and aggravate recurrent business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial unrest which burden and affect commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife.

The amendment was agreed to.

The next amendment was, under the subhead "Definitions", on page 4, line 2, after the word "organization", to insert "(other than when acting as employer)", so as to read:

SEC. 2. When used in this act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

The amendment was agreed to.

The next amendment was, on page 4, line 23, before the word "hours", to strike out "or", and in the same line, after the word "employment", to insert a comma and "or conditions of work", so as to read:

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, ln which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The amendment was agreed to.

The next amendment was, on page 5, line 1, after the word "trade" and the comma, to insert "traffic", so as to read:

(6) The term "commerce" means trade, traffic, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

The amendment was agreed to.

The next amendment was, on page 6 line 5, after the words "Executive Order", to insert "No. 6763", so as to read:

(11) The term "old Board" means the National Labor Relations Board established by Executive Order No. 6763 of the President on June 29, 1934, pursuant to Public Resolution No. 44, approved June 19, 1934 (48 Stat. 1183).

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The amendment was agreed to.

The next amendment was, on page 7, after line 3, to insert:

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

The amendment was agreed to.

The next amendment was, on page 7, line 13, after the word "appoint", to strike out "such employees, and"; in line 15, after the word "laws", to strike out "or" and insert "but subject to"; in line 16, after the word "amended" and the comma, to strike out "appoint and fix the compensation of"; in line 17, after the words "executive secretary", to strike out "assistant executive secretaries"; in line 18, after the word "attorneys" and the comma, to strike out "special experts,"; in line 19, after the word "directors" and the comma, to insert "and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States,", and on page 8, line 2, after the word "needed" and the period, to insert "attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor."

So as to read:

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

The amendment was agreed to.

The next amendment was, on page 8, line 20, after the word "Board", to strike out "at their present grades and salaries" and insert "with salaries under the Classification Act of 1923, as amended", so as to read:

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution No. 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution No. 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board, with salaries under the Classification Act of 1933, as amended, without acquiring by such a transfer a per-

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manent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this act.

The amendment was agreed to.

The next amendment was, on page 9, after line 23, to strike out:

[7650] (b) The Board shall have authority and is directed to study the activities of such boards and agencies as have been or may be hereafter established by agreement, code, or law to deal with labor disputes, and to receive from such boards reports of their activities.

The amendment was agreed to.

The next amendment was, under the heading "Rights of Employees", on page 11, line 9, after the words "representatives of the", to strike out "majority of the"; and in line 9, after the word "employees", to insert "as provided in section 9 (a)", so as to read:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made.

The amendment was agreed to.

The next amendment was, on page 11, after line 15, to insert:

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

The amendment was agreed to.

Mr. TYDINGS. Mr. President, at this point I desire to ask the Senator in charge of the bill a question. I ask the question of the Senator from New York [Mr. Wagner] because I know he is familiar with it and I want to get his philosophy on the matter.

On page 11, I ask if he individually would have any objection to an amendment being inserted between lines 15 and 16 to read as follows:

4. It shall be an unfair labor practice for any person (a) to coerce employees in the exercise of the rights guaranteed in section 7; (b) to interfere with, restrain, or coerce employees in their rights to work and to join or not to join any labor organization.

That amendment is proposed to be inserted on page 11, as a new provision, between lines 15 and 16.

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Mr. WAGNER. Mr. President, I should seriously object to it. An amendment like that was considered by the committee. At this moment, while we are considering only committee amendments, I should seriously object to the inclusion of any such amendment as that proposed by the Senator from Maryland.

Mr. TYDINGS. Mr. President, I desire to state that the amendment I have just read springs from this sort of situation. There are in one plant alone in Maryland about 12,000 men who belong to a company union. Their representatives have been to see me several times. They purport to speak for at least the overwhelming majority of the men working in that plant. They have no objection to the establishment of the principle of collective bargaining, but they say that if they have their own organization and it is satisfactory to them, they should be allowed to keep it and that it should not be legislated out of existence. My amendment seeks to give them the right to have the kind of organization they want and not be coerced into having the kind of organization they do not want.

Mr. BORAH. Mr. President, if there is anything in the bill which has the effect of which the Senator from Maryland now speaks, I have not been able to discover it.

Mr. TYDINGS. If I understood the remarks of the Senator from New York [Mr. Wagner] yesterday, though I do not know just where they apply in the bill, he spoke about outlawing, in effect, the company unions.

Mr. WAGNER. No; a company-dominated union.

Mr. BORAH. There is nothing in the bill to prevent a company union if the working men want a company union.

Mr. WAGNER. That is exactly what I said in several places in my address yesterday.

Mr. TYDINGS. May I read my amendment to the Senator from Idaho? I cannot see why there should be any objection to the amendment, which reads as follows:

It shall be an unfair labor practice for any person (a) to coerce employees in the exercise of the rights guaranteed in section 7—

Mr. BORAH. I am not clear, hearing it read in the first instance, that there is any objection to it, but I certainly should not want it offered on the theory which has been suggested, that there is anything in the bill which makes it necessary. We are here dealing with the relation between employer and employee. If we take up the matter of legislating between employees as perhaps we should, then we shall have to make far more machinery than the amendments provide. That is the only objection I see to placing it in this bill. It introduces a wholly new field of legislation.

Mr. TYDINGS. I want to make my position clear. I have no objection at all to the principle of collective bargaining, but I take the position that men ought not to be coerced to join any organization which they do not want to join.

Mr. BORAH. Certainly not.

Mr. TYDINGS. It is just as important to save their rights to them as it is to give others the right of collective bargaining. What the amendment would do would be to make illegal the coercion of any group of men who were satisfied with their present condition.

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Mr. BORAH. It has been stated over and over again by the critics of the bill that the bill prohibits the company union. There is nothing in the bill which prohibits a group of men coming together and organizing a company union if they themselves, the workers, desire a company union. The intention is to prevent companies from dominating and controlling a union in making the organization. I want to see the workingman free to join a union or to remain out of a union. I want workingmen free to form any kind of a union if it is freely formed; that is, formed of the free will of the employees. This bill does not do what so many seem to think.

Mr. TYDINGS. That is not the subject to which I am addressing myself. I am assuming as accurate the information which has been conveyed to me, that these men have a fear that they will be coerced into joining a union which they might not want to join. Whether it is right for them to join that union or not right for them to join that union, I am not discussing. My whole interest is to preserve for them the right to belong to the kind of union they want. If it is a company union all well and good. If it is not a company union, and is some other kind of a union, all well and good. I am not arguing whether one union or another is better for them. I am interested in preserving for them their American rights to join whatever union they think is best suited to their needs.

Mr. BORAH. If the bill does not do that then the bill ought not to be considered at all.

Mr. TYDINGS. Then there ought not to be any objection to my amendment, because it simply provides that they shall not be coerced into joining any kind of union that they themselves do not want to join.

Mr. BORAH. As I understand the matter, the bill is designed to give absolute freedom to American workingmen——

Mr. TYDINGS. That is what I want.

Mr. BORAH. The right to have a union or not to have a union, to be out of a union or in a union, to be in an organized labor union or in a company union, as the workingmen themselves shall determine. The only point is to prevent someone else from dominating and controlling them at all.

[7651] Mr. TYDINGS. I am just as anxious that the employees shall not dominate and control as is the Senator from New York [Mr. Wagner]. I am just as interested that nobody else shall coerce or dominate or control them against their will as is anyone else.

Mr. WALSH. Mr. President, let us proceed with the committee amendments.

Mr. MCNARY. Mr. President, I inquire if the Senator from Maryland has formally offered his amendment?

Mr. TYDINGS. I intended to propose it, but in view of the fact that committee amendments are now being considered I shall not detain the Senate further at this time. We were on the question at the moment, and I merely wanted to get the view of the Senator from New York.

The VICE PRESIDENT. The next amendment will be stated.

The next amendment of the Committee on Labor and Education was, under the heading, "Representatives and elections", on page 12,

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line 3, after the word "employer", to strike out "through representatives of their own choosing", so as to read:

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

The amendment was agreed to.

The next amendment was, on page 12, line 19, after the numerals "10", to strike out "(d)" and insert "(c)"; at the beginning of line 25, after the numerals "10", to strike out "(f)" and insert "(e)", and in the same line, after "or 10", to strike out "(g)" and insert "(f)", so as to read:

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) of 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

The amendment was agreed to.

The next amendment was, under the heading "Prevention of unfair labor practices", on page 13, line 12, after the word "otherwise", to strike out the comma and "except as provided in section 11", so as to read:

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

The amendment was agreed to.

The next amendment was, on page 13, after line 12, to strike out:

(b) The Board may, in its discretion, defer its exercise of jurisdiction over any such unfair practice in any case where there is another means of prevention provided for by agreement, code, law, or otherwise, which has not been utilized. But in any case where the Board has so deferred, the Board may at any time thereafter institute proceedings under this act in order to assure the effectuation of the policy of this act and the development of a uniform body of administrative interpretation and practice with respect to unfair labor practices as defined herein.

The amendment was agreed to.

The next amendment was, on page 13, after line 23, to strike out "(c) Whenever there is a charge or the Board shall have reason to believe" and insert "(b) Whenever it is charged"; on page 14, line 6, before the word "days", to strike out "three" and insert "five"; in line 12, after the word "answer", to insert "to the original or amended complaint"; and in the same line, after the word "complaint", to strike out the comma and "and to invoke the compulsory process of the Board in summoning witnesses in its behalf", so as to read:

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served

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upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than 5 days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing, or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

The amendment was agreed to.

The next amendment was, on page 14, line 21, before the word "The", to strike out "(d)" and insert "(c)"; in line 23, after the word "Board", to insert "upon notice"; on page 15, line 6, after the word "including", to strike out "restitution" and insert "reinstatement of employees with or without back pay", and in line 15, after the word "order", to strike out "dissolving" and insert "dismissing", so as to read:

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

The amendment was agreed to.

The next amendment was, on page 15, after line 20, to strike out: "(f) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States within any circuit wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, or the Court of Appeals of the District of Columbia", and insert: "(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business", and on page 17, line 21, after the word "review", to insert "by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and", so as to read:

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or

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if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its mem-**[7652]**ber, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive, and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

The amendment was agreed to.

The next amendment was, on page 18, at the beginning of line 3, before the word "Any", to strike out "(g)" and insert "(f)"; in the same line, after the word "by", to strike out "an" and insert "a final"; and in line 19, after the word "subsection", to strike out "(f)" and insert "(e)", so as to read:

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying, or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

The amendment was agreed to.

The next amendment was, on page 19, at the beginning of line 1, before the word "The", to strike out "(h)" and insert "(g)"; and in

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line 2, after the word "section" where it occurs the first time, to strike out "(f) or (g)" and insert "(e) or (f)", so as to read:

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

The amendment was agreed to.

The next amendment was, on page 19, at the beginning of line 5, before the word "When", to strike out "(i)" and insert "(h)"; and in line 6, before the word "restraining", to insert the article "a", so as to read:

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, or setting aside, in whole or in part, an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the act entitled "An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

The amendment was agreed to.

The next amendment was, on page 19, at the beginning of line 13, before the word "petitions", to strike out "(j)" and insert "(i)", so as to read:

(i) Petitions filed under this act shall be heard expeditiously, and if possible within 10 days after they have been docketed.

The amendment was agreed to.

The next amendment was, on page 19, after line 15, to strike out:

SEC. 11. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice affecting commerce; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, but solely at the request of the National Labor Relations Board, to institute proceedings in equity to prevent and restrain any such unfair labor practice, in the judicial district wherein such unfair labor practice occurred or wherein the person complained of resides or transacts business. Such proceedings may be by way of petition setting forth the case and praying that such violation be enjoined and that such affirmative action, including restitution, be required as will effectuate the policies of this act. When such person shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearings and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

The amendment was agreed to.

The next amendment was, on page 20, after line 10, to strike out:

ARBITRATION

SEC. 12. (a) The Board shall have power to act and to appoint any person, agent, or agency to act as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the Board or its appointees. A provision in a written contract or a written agreement to submit to the arbitration of the Board or its appointees, when accepted by the Board after the dispute has arisen, shall be valid and irrevocable as to the parties to the agreement, save upon such grounds as exist at law or in equity for the revocation of any contract. If any party fails, neglects, or refuses to perform under such contract or submission, the Board, its agents or appointees, may nevertheless, in the discretion of the Board, proceed to hear the case ex parte, and the Board, its agents or appointees, shall have the power to issue an award applicable to the submitting parties.

(b) The Board shall make and publish, pursuant to section 6 (a), rules for the conduct of arbitrations, and an agreement to submit to the arbitration of the

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Board, or its appointees or its agents, shall be deemed consent to the proceeding being conducted in accordance with such rules then obtaining unless otherwise specified in the arbitration contract or submission. An agreement to submit to the Board shall authorize the Board to appoint agents to take evidence, and in the discretion of the Board, to render a decision in the name of the Board on the findings thus presented, unless otherwise specified in the agreement. The Board may, however, in its discretion, render a decision on testimony taken before its agents.

(c) In any case in which an award has been made, the Board shall file the award in the clerk's office of the United States District Court that has been agreed upon by the parties, or, in default of such agreement, that of the district wherein the labor dispute arose or the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award on the grounds hereinafter set forth shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment in accordance with the terms of the award: *Provided*, That no employee individually, and no group of employees collectively, shall be compelled to render labor or services without their consent.

(d) A petition for the impeachment of any award may be filed not more than 10 days after the communication of notice of the filing of the award to the submitting parties. Notice of filing of such petition shall be served personally or sent by registered mail to each submitting party. The petition shall be sustained by the court only on one or more of the following grounds:

1. That the proceedings were not substantially in conformity with the provisions of the arbitration agreement or rules adopted for the conduct of the arbitration.

2. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the award practiced fraud or corruption which affected the result; *Provided*, That partisanship known, or which by the exercise of due care should have been known, by a party prior to the arbitration proceeding, shall not constitute fraud of which he may avail himself within the meaning of this section.

(e) The court shall not set aside an award on the ground that it is invalid for uncertainty. In such case the court shall suspend action pending its resubmission of said award to the Board for interpretation.

(f) Where there was an evident material miscalculation of figures, or an evident material mistake in the description of any person, thing, or property referred to in the award, or where the arbitrators have awarded on a matter not submitted to them, unless it is a matter affecting the merits of the decision on the matters submitted or where the award is imperfect in the matter of form not affecting the matter of the controversy, the court shall modify and correct the award so as to effect the intent thereof and promote justice between the parties, and thereupon shall enter judgment in accordance with subsection (a).

(g) The court shall construe every award with a view to favoring its validity. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but that a part of the award is valid, the court shall nevertheless enter judgment upon such part or parts of the award as are valid unless such part or parts are inseparable from the remainder of the award, in which case the entire award shall be vacated.

[7653] (h) If the petition for impeachment of the award is not sustained, the court shall enter judgment in accordance with the terms of the award, and in accordance with subsection (c). Where a petition for the impeachment of an award is granted, the award shall be vacated, and the court shall remand the arbitration to the Board, which may, in its discretion, accept the case for resubmission to arbitration in accordance with the terms of the original agreement or with such modification as the Board deems fit, or it may refuse to take any further action regarding it.

The amendment was agreed to.

The next amendment was, under the heading "Investigatory powers", on page 24, line 12, after "sec.", to strike out "13" and insert "11", and in line 15, after the word "by", to strike out "section 9,

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section 10, and section 12 (in any arbitration affecting commerce)" and insert "section 9 and section 10", so as to read:

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the excise of the powers vested in it by section 9 and section 10—

The amendment was agreed to.

The next amendment was, on page 25, line 12, after the word "possession", to insert "or the Supreme Court of the District of Columbia"; and in line 16, after the word "business", to strike out "and the Supreme Court of the District of Columbia," so as to read:

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

The amendment was agreed to.

The next amendment was, on page 27, line 12, after "Sec.", to strike out "14" and insert "12", and in the same line, after the word "willfully", to strike out "assault," so as to read:

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

The amendment was agreed to.

The next amendment was, on page 27, line 19, after "Sec.", to strike out "15" and insert "13", so as to read:

SEC. 13. Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

The amendment was agreed to.

The next amendment was, on page 27, line 22, after "Sec.", to strike out "16" and insert "14"; and on page 28, line 11, after the word "shall", to strike out "apply" and insert "remain in full force" and effect", so as to read:

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (1) and (m) of the act approved June 7, 1934, entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (1) and (m)), as amended from time to time or of Public Resolution No. 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this act, this act shall prevail: *Provided*, That in any situation where the provisions of this act cannot be validly enforced, the provisions of such other acts shall remain in full force and effect.

The amendment was agreed to.

The next amendment was, on page 28, line 12, after "Sec.", to strike out "17" and insert "15", so as to read:

SEC. 15. If any provision of this act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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The amendment was agreed to.

The next amendment was, on page 28, line 17, after "Sec.", to strike out "18" and insert "16", so as to read:

SEC. 16. This act may be cited as the "National Labor Relations Act."

The amendment was agreed to.

The VICE PRESIDENT. That completes the committee amendments.

Mr. TYDINGS. Mr. President, I have two amendments which I desire to offer. The first amendment is, on page 10, line 10, after the word "protection", to insert "free from coercion or intimidation from any source."

The VICE PRESIDENT. The Senator from Maryland offers an amendment, which will be stated.

The CHIEF CLERK. On page 10, line 10, after the word "protection", is proposed to insert:

Free from coercion or intimidation from any source.

Mr. TYDINGS. So that the whole section will then read as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection *free from coercion or intimidation from any source.*

Is there any objection to that amendment?

Mr. WAGNER. There certainly is.

Mr. MCNARY. Mr. President, does the Senator propose that as a new subdivision (5) on page 11?

Mr. TYDINGS. No; that is the next amendment. The two amendments seek to accomplish the same purpose. I cannot see why employees should not be allowed to bargain collectively without coercion or intimidation from any source whatsoever.

Mr. WAGNER. Mr. President, I understand the concern which the Senator from Maryland has for the particular representative plan which he has in mind. As was developed at the hearings before the committee——

Mr. TYDINGS. Mr. President——

Mr. WAGNER. Let me finish, please, because I know the plan of which the Senator speaks. It is a so-called "company union" plan, and my own opinion is that it is a company-dominated union, for the employer finances it.

Mr. TYDINGS. Let us assume that it is.

Mr. WAGNER. Very well.

Mr. TYDINGS. That is not the question at issue here.

Mr. WAGNER. Just one minute. Besides prohibiting the financing of such a union, the bill gives the workers absolute freedom to select representatives of their own choosing, and the way it is done is this——

Mr. TYDINGS. Yes; but if the Senator will permit me——

Mr. WAGNER. I should like to finish.

Mr. TYDINGS. But the Senator is proceeding on a wrong premise. I leave out all consideration of any particular union, a company union, or any other kind of union. All this amendment seeks is the

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right of the men themselves to have whatever kind of union they want, without coercion or intimidation by anybody.

Mr. WAGNER. Exactly; and that is what they are given under——

Mr. TYDINGS. Does the Senator want them coerced or intimidated?

Mr. WAGNER. There is a difference between using the word "coercion" as between employees and using it as between an employer and an employee. The elections which are provided for in this bill will be conducted under Government supervision.

Mr. TYDINGS. I do not interfere with that.

Mr. WAGNER. And each person who votes will choose the organization which he wishes to have represent him, or decide not to be represented by any organization.

Mr. TYDINGS. Mr. President, if the Senator will yield, I did not use it as between employee and employee. I said that no person should interfere with the right of the employee to select his own organization.

[7654] Mr. WAGNER. The amendment which the Senator suggests is not new to me. If I had been willing to accept that amendment, all the large employers who are trying to prevent their workers from organizing would have accepted this bill, because the amendment is exactly what they want.

So far as coercion is concerned, if it exists among employees, there is now an absolute legal right to go into court and seek an injunction if such coercion takes the form of intimidation or violence of any kind or character. When I was a judge I issued such injunctions myself. But how has the word "coercion" as among employees been interpreted by the courts? The use of pickets, mere persuasion without any force, threats, or intimidation, has been deemed coercion; and employees simply trying to persuade their fellow workers to join a particular organization have been charged with coercion.

This question came up when the Railway Labor Act was before the Interstate Commerce Committee. The railroad companies, which still had company-dominated unions, desired to have an amendment similar to that of the Senator from Maryland placed in the act. As I recall, the committee rejected that proposal by a unanimous vote. Mr. Eastman appeared before the committee and testified upon that question, and for the enlightenment of the Senate I should like to read from his testimony.

Mr. TYDINGS. The Senator is really speaking in my time. He has not yet given me a chance to complete my statement.

Mr. WAGNER. I thought I had the floor.

Mr. TYDINGS. I did not so understand.

The PRESIDENT pro tempore. The Senator from Maryland has the floor.

Mr. WAGNER. I beg the Senator's pardon.

Mr. TYDINGS. I am ready to answer any questions, but I do not want the Senator to cry down my amendment at least before I state my own position.

Mr. WAGNER. The Senator asked me if I objected to the amendment, and I was trying to answer his question. That could not be done in a word.

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Mr. TYDINGS. Mr. President, let me again read section 7 as it would stand with this amendment. I think we are discussing something which is not before the Senate. Here is the way it would read:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection—

Then I add—

free from coercion or intimidation from any source.

If we are going to give the employees this right, why should they not be allowed to exercise it, not only without coercion from those who employ them but without coercion from those who may not employ them? Is not this still a country where a man can select, without coercion or intimidation, the kind of organization to which he shall belong? If this bill is fair, if it attempts to give to those who toil the right to work out their own destiny, then it is wrong not to say they shall not be coerced or intimidated in regard to joining whatever organization they think will give them the opportunity to secure a chance to work under the best conditions.

What harm can there be in saying that the employees shall have this right without coercion or intimidation from any person, employer, or anyone else whatsoever?

Mr. COUZENS. Mr. President——

Mr. TYDINGS. I will yield to the Senator from Michigan in just a minute.

Or do we mean, by inference, in speaking against this amendment, that the employees shall be subjected to certain coercion or intimidation from some other source, although the employer shall not intimidate or coerce them?

I now yield to the Senator from Michigan.

Mr. COUZENS. Mr. President, of course the Senator from Maryland knows, as does the Senator from New York—and that is the reason why I am astonished by the objection of the Senator from New York to this amendment—that in every big industrial community there is competition between one union and another. There is just as much fight, there is just as much effort, there is just as much salesmanship, there is just as much force used in many cases to induce workmen to join one union as to join another. For the life of me I do not understand why a union should be enabled to coerce a worker into an organization which he does not choose to join.

Mr. WAGNER. Mr. President, will the Senator yield?

Mr. TYDINGS. I yield to the Senator.

Mr. WAGNER. Such acts are today illegal and remediable if they amount to threats or intimidation or force of any kind or character. Application may be made to a court for an injunction, and injunctions are issued by the thousands by courts all over the country to prevent such action. There is no remedy today, however, when an employer uses his economic pressure to compel a worker to join a particular organization or not to join a particular organization. There

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has been no enforcement power anywhere to prevent that type of economic coercion.

Mr. COUZENS. Mr. President, will the Senator yield?

Mr. TYDINGS. I yield to the Senator from Michigan.

Mr. COUZENS. The Senator from New York insists on confusing the issue.

Mr. WAGNER. I think the Senator from Michigan is confusing the issue.

Mr. COUZENS. The Senator from Maryland yielded to me, and I was not discussing coercion on the part of the employer.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. TYDINGS. I have yielded first to the Senator from Michigan. When he finishes, I will yield to the Senator from Kentucky.

Mr. COUZENS. The Senator from New York injected that matter into the issue to confuse it. The Senator from Michigan is not in any way attempting to weaken the bill of the Senator from New York with respect to the coercion of the employer.

Mr. TYDINGS. Neither am I.

Mr. COUZENS. What the Senator from Michigan is trying to do is to support the contention of the Senator from Maryland that coercion between union and union should be prohibited. It is not enough to say that in 48 jurisdictions there is sufficient remedy. If there is sufficient remedy, as the Senator from New York contends, let us put it in the act.

Mr. TYDINGS. And if there is sufficient remedy, then the mere insertion of these words, which make that for which the Senator from New York contends mandatory, can have no effect at all but to strengthen the bill for the ideal purpose which he espouses, of allowing labor to combine and collectively bargain without coercion from any source whatsoever.

Mr. WAGNER. Mr. President——

Mr. TYDINGS. I yield to the Senator from New York.

Mr. WAGNER. I thought the Senator had concluded.

Mr. BORAH. Before the Senator from Maryland takes his seat I should like to ask a question. I understand the Senator from Maryland would add certain words to section 7.

Mr. TYDINGS. The words "without coercion or intimidation from any source."

Mr. BORAH. Does the Senator from Maryland believe that if the situation is as he describes it, and a remedy is called for, those simple words will be sufficient to afford protection?

Mr. TYDINGS. I have another amendment in the same tenor which I intend to offer, to be inserted on page 11, between lines 15 and 16.

Mr. BORAH. Without taking too much time may I ask the Senator to read the amendment?

Mr. TYDINGS. This amendment would read:

> It shall be unfair labor practice for any person to coerce employees in the exercise of their rights guaranteed in section 7, or to coerce employees in their right to work or to join or not to join any labor organization.

[7655] Mr. BORAH. That seems to me to state a fundamental principle.

Mr. TYDINGS. Inasmuch as that is what the Senator from New York says he wants to obtain, namely, the right of labor to be re-

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moved from any coercion or intimidation, the right to collectively bargain for whatever they think would be better for themselves, and that nobody shall step in and frighten them, that nobody shall coerce them, if we do not keep that principle in the bill, then this boasted thing about labor having freedom is a farce, because we would simply take coercion away from one side and permit it on the other side. If it is wrong on one side, it is wrong on the other side.

A laborer ought to be entitled without coercion from any side to say whether he wants to join this, that, or the other union, and if it is wrong for the employer, as it is wrong, to coerce labor or intimidate labor, it is equally wrong for somebody else to coerce laborers and intimidate them. All I am asking is that labor be protected from any coercion or intimidation from any source whatsoever.

Mr. HASTINGS. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. Duffy in the chair). Does the Senator from Maryland yield to the Senator from Delaware?

Mr. TYDINGS. I yield.

Mr. HASTINGS. The Senator will recall also that the bill provides that the majority may make the bargain for the minority.

Mr. TYDINGS. That is correct.

Mr. HASTINGS. So that under the provisions of the bill, if they succeed in getting a majority, by force, or coercion, or any other improper means, it is absolutely controlling over the 49 percent who have absolutely no rights and nothing to say.

Mr. TYDINGS. I am going to ask the Senator from New York a direct question. He does not need to answer it now, because he is going to respond in his own time.

I do not mean to belittle the efforts of the Senator from New York; I rather applaud them, because no Senator in this body is more anxious to help labor than is the Senator from New York. His whole impulse is to help the workingman, and certainly, although I have been against the Senator from New York on some propositions, I am in favor of the same rights being accorded labor.

I wish to ask the Senator from New York a question. He implies in his argument that it is wrong for the employer to coerce the employee, and with that I am in accord; but he implies in his argument that it is not wrong for a labor organization to coerce an employee who does not want to belong to the organization to which the coercers belong. It strikes me that, as a matter of logic, and in all fairness to the Senator, what he wants to obtain is the free and untrammeled right to bargain without coercion of employee and without coercion of employer. He wants them both to have the right, without respect to any outside influence, to bargain for the common good.

Does he not say in effect that, although it is wrong for the employer to coerce labor—and he is right there—it is not wrong for an employee to coerce another employee?

Mr. LONG. Mr. President, will the Senator yield?

Mr. TYDINGS. I yield.

Mr. LONG. I should like to ask the Senator a question. What is coercion by a labor representative would be for the court's interpretation, would it not?

Mr. TYDINGS. I think so.

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Mr. LONG. So the court might hold that there was intimidation or coercion if an organizer said, "Only laboring men who are affiliated with our union are going to get jobs."

Mr. TYDINGS. Of course, the whole act will be interpreted by the courts, so far as that is concerned, but my business is not sitting on the court; my business, sitting here as a Senator, is to safeguard, so far as my humble intelligence will allow, the right of the American workingman not to be coerced by anybody in doing a perfectly legal thing, namely, collective bargaining for his advancement and progress and better working conditions. I care not whether the coercion comes from above, comes from the bottom, or comes from an extraneous source, if it is coercion or intimidation, the laboring man does not have the chance to which he is entitled.

Mr. LONG. Mr. President, will the Senator yield again?

Mr. TYDINGS. I yield.

Mr. LONG. The Senator knows that we have been trying to get laborers the right to organize for quite a while, and we never have been able to draft a law yet which has not been whittled down. By interpretation the laws have always been cut down. Does not the Senator think we can take a little chance for once in our lives for a little while? If the Senator from New York can draft an act that will protect labor, he will be the only man who has ever been able to do it. Nobody else has ever been able to do it with the court interpretations. I do not believe we ought to whittle away the bill and not take a chance.

Mr. BARKLEY. Mr. President, will the Senator from Maryland yield to me?

Mr. TYDINGS. I yield.

Mr. BARKLEY. I am unable to visualize an exactly parallel situation between the possible coercion of a workingman by his employer and the possible coercion of a workingman by some other employee.

Mr. TYDINGS. If the Senator will permit me to interrupt him right there, I will give him an opportunity to go on in my time. I take it for granted that the Senator does not want the laborer coerced by anybody. It that correct?

Mr. BARKLEY. I do not.

Mr. TYDINGS. If we all agree on that objective, then what is the harm in saying he shall not be coerced from any source whatever?

Mr. BARKLEY. There is nothing in the bill which assumes he is going to be coerced.

Mr. TYDINGS. Let us say so.

Mr. BARKLEY. He cannot be coerced to the same degree by a fellow employee as he might be by his employer. The employer might threaten to discharge him from his position. The employer might threaten him with a reduction in wages. The employer might threaten an employee by all sorts of forms of coercion and intimidation that would result in unemployment. But I do not know of such power as that possessed by an employee over one of his fellow employees.

Mr. COUZENS. Mr. President, will the Senator from Maryland yield?

Mr. TYDINGS. I will yield to the Senator from Michigan in just a moment. Under my amendment the employer could not threaten an employee with a reduction in wages, he could not threaten him

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with longer hours, he could not threaten him with anything, because under the amendment an employee could not be coerced or intimidated by anybody.

Mr. BARKLEY. He could not be under the bill, so far as that is concerned, even without an amendment. It might be possible for an employee to persuade a fellow employee that he ought to belong to one union or another, but I cannot understand how a man who is working for wages can go to a man working for the same employer, or for a different employer, and intimidate or coerce the other employee to join or not to join a particular union, because neither one of them can fire the other from his job.

Mr. TYDINGS. I yield to the Senator from Michigan.

Mr. COUZENS. There is nothing in the bill and nothing in the amendment proposed by the Senator from Maryland which would confine the coercion to employees in the same plant. I do not know whether or not the Senator from Kentucky was in the Chamber when I spoke, but I have worked in plants where hundreds of thousands of men were employed, and I know that there is competition between unions to get membership. I know of cases where leaders of labor unions who were not employees of the plants have gone out and threatened wives and children, telling them that if the husbands and fathers did not join their union, they would be discharged.

[7656] Mr. BARKLEY. That must be an extremely exceptional case.

Mr. COUZENS. That is a kind of coercion with which I am wholly familiar and, therefore, I believe it is vitally necessary to protect all employees against coercion. I have never, in my capacity as an employer, attempted to coerce any man to keep him from joining any union.

Mr. BARKLEY. I realize that, of course.

Mr. COUZENS. And I do not want any employer to do it. But why should an outside union, located here in Washington, or in Toledo, or somewhere else, go to Detroit and say to employees in some plant there, "If you do not join our union, we will punish your wife and children"? That is the kind of thing I want to have prevented.

Mr. BARKLEY. Mr. President, will the Senator yield right there?

Mr. COUZENS. I cannot talk if the Senator keeps talking at the same time.

Mr. BARKLEY. I thought the Senator from Michigan had found a stopping place.

Mr. COUZENS. No; unfortunately, I never can keep up with the Senator from Kentucky, so I take my seat and will let him talk for the rest of the day, as he usually does.

Mr. BARKLEY. The Senator need not get his ire up. I am asking him a sincere question, and I hope I will not give vent to my temper in doing it. I meant no reflection on the Senator from Michigan. I wanted to ask him a perfectly sincere and a perfectly civil question, the answer to which might grow out of his own experience.

I desired to ask the Senator from Michigan this question: Assuming he and I were employed by the same employer or by different employers as laboring men not belonging to any union, and somebody, either from the inside or from the outside, came to him or to me, or to both of us, to persuade us to join a particular union by arguing with

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us that it was a better union, or a more efficient or a more effective union than some other union. Would that be regarded as coercion or intimidation?

Mr. TYDINGS. No.

Mr. COUZENS. I certainly would not put such an absurd interpretation on it. That is just salesmanship, and I have no objection to labor unions anywhere selling their service and their membership. I want them to do it. But if I reach the conclusion that I want to decline to join any affiliation of the American Federation of Labor, I do not want some labor leader to go around threatening what they are going to do to me if I fail to submit to their salesmanship.

Mr. BARKLEY. One other question—and I propound this question to both the Senator from Michigan [Mr. Couzens] and the Senator from Maryland [Mr. Tydings], as well as to other Senators. Inasmuch as the court must pass on this bill if it shall be enacted, and must make an interpretation of conduct of men, is there a possibility that some court, some Federal judge, might hold that an effort to persuade me or the Senator from Michigan or anybody else to join a certain union or not to join another one, would be intimidation or coercion on the part of the fellow laborer?

Mr. COUZENS. Mr. President, will the Senator yield?

Mr. TYDINGS. I yield.

Mr. COUZENS. If the Senator from Kentucky wants to draw up an amendment so as to exclude that sort of interpretation, which I think would be ridiculous, I would support the amendment.

Mr. BARKLEY. It would be no more ridiculous than some interpretations given heretofore by judges of provisions of the law.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Idaho?

Mr. TYDINGS. I yield.

Mr. BORAH. There is a very large body of workingmen who would not be covered either by the Senator's amendment or by the bill, that would enter into the question, of course; that is the body of men who do not belong to a union at all or who do not desire to.

Mr. TYDINGS. That is true.

Mr. BORAH. They would not be covered either by the amendment or by the provisions of the bill. If we are to enter the field of legislation as between employees the bill would have to be radically changed.

Mr. COUZENS. Mr. President, will the Senator yield?

Mr. TYDINGS. I yield.

Mr. COUZENS. I understood from the Senator's amendment that coercion on the part of any person was prevented, which would include all, whether that provision was in the bill or not.

Mr. BORAH. I am speaking of the right to collectively bargain.

Mr. TYDINGS. Yes; the right to collectively bargain.

Mr. BORAH. Section 7 of the bill deals only with collective bargaining.

Mr. TYDINGS. Let me try to reduce the issue which has been joined here to its narrowest or most accurate limitations.

Mr. HASTINGS. Mr. President——

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Mr. TYDINGS. Just a moment. Let me develop this so that it will be before Senators as I see it. I do not believe there is a Senator on the floor who will contend that if my amendment is adopted, an employer can coerce an employee thereafter. Is there anyone who takes issue with that statement? There is not one Member of the Senate who does.

Mr. WALSH. Mr. President, without the Senator's amendment the bill forbids that. That is the very purpose of the bill. The Senator from Maryland is losing sight of the objective of the bill. It is not to regulate the relation of employee to employees, it is to regulate the relation of employees to employers.

Mr. TYDINGS. Just a moment. I asked if there was any Senator in this body who would say that if my amendment were adopted it would be legal for any employer to coerce any employee?

Mr. WALSH. Without the adoption of the Senator's amendment such coercion is illegal. That is provided in the bill.

Mr. TYDINGS. But my question is whether any Senator would make that statement if my amendment were adopted?

Mr. WALSH. The trouble is, however, that the amendment of the Senator from Maryland includes that and more too.

Mr. BARKLEY. Mr. President——

Mr. TYDINGS. Just a moment. I do not want an argument at this point. I wish to know if there is any Senator who contends that if my amendment were adopted an employer could coerce an employee?

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. TYDINGS. Does the Senator from Kentucky say "yes" in answer to my question?

Mr. BARKLEY. I desire to answer.

Mr. TYDINGS. Will the Senator from Kentucky answer my question first and then make an explanation?

Mr. BARKLEY. Of course I will.

Mr. TYDINGS. Very well.

Mr. BARKLEY. Nobody can contend that under the Senator's amendment an employer could coerce an employee.

Mr. TYDINGS. That is right.

Mr. BARKLEY. But he cannot do that even without the Senator's amendment. The language of the bill specifically prohibits that.

Mr. TYDINGS. Than what harm is there in putting my amendment in the bill?

Mr. BARKLEY. Because the Senator intends it to go much further than the relationship of employer and employee.

Mr. HASTINGS and Mr. WAGNER addressed the Chair.

Mr. TYDINGS. I cannot answer unless I have the opportunity to continue.

The PRESIDING OFFICER. Senators who desire to be recognized will address the Chair in proper order. Several **[7657]** Senators have addressed the Chair. Does the Senator from Maryland yield, and, if so, to whom?

Mr. TYDINGS. I will not yield now, but I will yield in just a moment, as soon as I have addressed myself to the point raised by the Senator from Kentucky.

Now, we have the situation that there is not a Senator in this body who contends that if my amendment were adopted any employer

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could coerce any employee. Not one says that is not true. They all say it is true. The Senator from Kentucky just said it is true. He said that would be true without my amendment. Certainly my amendment puts the clincher on it.

If that be true, who, then, is to be given the right or permitted to have the right to coerce and intimidate? Is someone else to have this right against which we inveigh in one breath and inferentially embrace in the next. If it is wrong for the employer to coerce his men—and it is wrong—is somebody else to be given the right to do the same wrong because he occupies, forsooth, a different position? What kind of logic is that, assuming that we are impelled by the high-sounding purpose written into this bill?

I now yield to the Senator from Delaware.

Mr. HASTINGS. Mr. President, I desire to call the attention of the Senator from Maryland to a paragraph in the statement made by the President in the settlement of the automobile-industries strike in 1934, in which he used this language:

> The Government makes it clear that it favors no particular union or particular form of employee organization or representation. The Government's only duty is to secure absolute and uninfluenced freedom of choice without coercion, restraint, or intimidation from any source.

Almost the exact language of the amendment of the Senator from Maryland.

Mr. TYDINGS. Mr. President, I shall detain the Senate but a minute more. We have established a premise, and everybody agrees that under this amendment, and, it is contended, that even without it, no employer has the right to coerce or intimidate labor. Is there anyone here who contends that anybody else ought to have that right? I now pause for an answer to that question.

Mr. BORAH. Mr. President——

Mr. TYDINGS. Just a moment. Let me make my question plain. Is there anyone in the Senate who contends that anybody ought to have the right to coerce and intimidate any labor group which desires to collectively bargain?

I yield to the Senator from Idaho.

Mr. BORAH. I would answer of course "no"; but I want the Senator to think of the proposition, that if we enter the field of colaborers or counions we must also include the man who does not belong to a union at all. We must protect him from coercion. That is where the great coercion operates. In framing this bill we have not entered that field at all.

Mr. TYDINGS. That is right.

Mr. BORAH. We have simply dealt with the employer and the employee. However, there is another field in which such legislation might be advisable. It cannot be incorporated, however, by a single amendment in this bill. There is much more to do in regard to it. That is what I should like to have the Senator think over before we vote on the question.

Mr. WAGNER rose.

Mr. TYDINGS. Let me answer the Senator from Idaho, and then I will yield to the Senator from New York. I agree with the observations he has made. They deserve thought. However, I come back to this premise: Whatever we are dealing with within the bill, let

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us deal with it consistently. We are dealing with employers of a class and employees of a class, and certainly if we want to remove the employee from the coercion and the intimidation of the employer, let us remove the same employee from any other coercion and intimidation from which we can remove him.

I now yield to the Senator from New York.

Mr. WAGNER. I wish to call to the attention of the Senator a point which he has emphasized by the chairman of the committee, who, I am sure, will in due time explain the opposition of the committee toward the amendment which the Senator has offered. Aside from a few representatives of company unions, there was no one who seeks this amendment except the employer, who really is not concerned about protecting the workers in their efforts to organize. The Senator asks: "Is there any danger in this amendment? Should not coercion be prohibited?" If "coercion" were interpreted always as the Senator would like it to be, I should agree with him.

Mr. TYDINGS. I would have no objection to the Senator from New York writing out a definition of the word "coercion" and including that in the language.

Mr. WAGNER. The difficulty is that it cannot be done, because of an interpretation by the courts. The courts have said that a threat to strike is coercion. With that in mind, the Senator can see the reason why the large employers have been fighting for his amendment. The Chairman of the Committee on Education and Labor will support my statement that if we had agreed to that amendment the employers would have cheered for this bill. It would have helped them more than domination of a union.

Mr. TYDINGS. Will the Senator allow me to interrupt him?

Mr. WAGNER. The Senator has asked me a question, and I am answering his question.

Mr. TYDINGS. Yes; but let me point out to the Senator that he is talking about an erroneous proposition.

Mr. WAGNER. Oh, no; I am talking about the interpretation by the courts of the word "coercion."

Mr. TYDINGS. No; the Senator is branching off into the philosophy of the bill and is not talking on the amendment.

Mr. WAGNER. I am talking about the court's interpretation of "coercion."

Mr. TYDINGS. If the Senator will just be patient for a minute, I think I will show him where he is wrong.

Mr. WAGNER. Very well.

Mr. TYDINGS. The amendment would make the section read as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, free from coercion or intimidation from any source.

The Senator from New York cites as being in conflict with this amendment a case where a group of men threaten to strike. All I am attempting to do by my amendment is to permit them to threaten to strike without coercion or intimidation from any outside source. They can collectively bargain and nobody can coerce them or intimidate

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them. The illustration which the Senator presents is that if the Senate should put in the bill the provision that employees shall not be coerced or intimidated, they could not even threaten to strike for higher wages; and that is beside the point.

Mr. WAGNER. Mr. President, will the Senator further yield? The Senator did not permit me to finish my recital of what the courts have held.

Mr. TYDINGS. No; because the Senator was discussing something not before the Senate.

Mr. WAGNER. Oh, yes; it is before the Senate. How about peaceful persuasion? That has been held in some jurisdictions to be coercion.

Mr. GORE. I suggest that we can "except" that out.

Mr. TYDINGS. Will the Senator bear with me a moment? I know what he is discussing; but he is not discussing my amendment.

My amendment simply gives to employees the right to bargain collectively without coercion or intimidation from anybody, and if they want to bargain and say, "We are going to strike if you do not raise our wages 10 percent". there is nothing in my amendment which would prevent it, and the Senator knows it. If they want to say to an employer, "The working conditions here are horrible, and we are not going to keep on under these conditions", there is nothing in the amendment—and the Senator knows it—which will require them to continue working. What the Senator is arguing is that if these words are put into the **[7658]** bill labor cannot strike. I say that under this amendment they can take any action they desire to take, and they have the assurance that they shall not be coerced or intimidated—not the employer but the workingman shall not be coerced or intimidated by anybody in collective bargaining.

The Senator has not been addressing his remarks to that question; he has been addressing them to a supposition which the amendment does not embrace. What is that supposition? That, if the amendment were adopted and a group of men should meet and collectively bargain in an effort to obtain shorter hours or more pay or better working conditions, the fact that we say they shall not be coerced and intimidated is going to militate against them in accomplishing the objective they seek to attain. All that I propose to provide by this amendment is that if labor organizes and bargains collectively for any purpose whatsoever, nobody shall dare to coerce or intimidate them in the seeking of any objective they may have in mind.

Now, Mr. President, I am going to conclude by reading the section as it will read if my amendment shall be adopted. Here is how it will then read:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection free from coercion or intimidation from any source.

Instead of taking rights away from them in collective bargaining the amendment would throw additional safeguards around those rights. It provides that they shall not be coerced and that they shall not be intimidated from any source whatsoever in asking for more wages or for shorter hours or better working conditions or for this

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or for that. That is all the amendment provides, and I hope the Senate will adopt it.

Mr. WALSH. Mr. President, I have refrained from discussing this bill because the able Senator from New York [Mr. WAGNER] presented every aspect of it fully and ably yesterday, but the amendment now proposed by the Senator from Maryland [Mr. TYDINGS] raises the question of what is this bill all about? What is its objective? What does it do and what does it not do?

First of all, it does not require or request any employee to join any organization of any kind, shape, form, or character. Secondly, it does not seek to encourage or bring about the establishment of any labor organization under any employer where there is now none. It makes absolutely no change whatever in existing law, so far as the relation of employers and employees are concerned, except in those limited respects that relate to collective bargaining and the right of employees to organize without interference by employers. What the law now is with respect to the relations of employees with each other remains as it is. This is not a police court bill to punish employers or employees in the criminal courts for assaults, threats, or use of force. It does make two important changes in the relations of employer and employee; and the reason for the changes is an act passed by Congress, the National Recovery Act, which included a section known as section 7 (a). In that act, and under section 7 (a), we declared as a Federal policy the right of employees to organize, to choose the representatives of their own selection for the purpose of engaging in collective bargaining with their employers. It was a mere declaration of a principle. It was like saying religion is free and doing nothing to prevent barriers being set up designed to obstruct the free exercise of religion; it was like saying the press is free and doing nothing to prescribe what should be considered violations of the rights of the press to be free.

A voluntary Board, the National Labor Board, with Senator WAGNER as chairman, was set up by the President which had no real legal authority to administer that declaration of the right of employees to engage in collective bargaining. The Board had the right to make suggestions to the officials of the N. R. A., and the N. R. A. in some instances had the right to take away the Blue Eagle which was given to the employers by reason of their loyalty to the principles of the N. R. A. It was ineffective; the Board was helpless. The result was that a bill was presented to Congress at the last session similar in substance to the pending bill, attempting to set up machinery to make effective the declaration of Congress that employees should have the right to engage in collective bargaining.

Toward the latter part of the session the bill was reported to the Senate, but, because the Congress was getting ready to adjourn, the President suggested a compromise measure, which became known as Resolution 44, which authorized the President to set up a Board for the purpose of regulating elections held by employees for the purpose of designating their representatives for collective bargaining. Even that resolution was powerless, though it did attempt to give authority to the Board to hold elections of employees to determine who should represent them in collective bargaining. It was impotent, because, where employers resist an election order by the Board,

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provision is made for a court review prior to holding the election, and several cases are now in the courts, and the Board has not been able to hold elections.

So we have a situation of saying employees are free to engage in collective bargaining——

Mr. COUZENS. Mr. President, will the Senator yield at that point?

Mr. WALSH. Yes.

Mr. COUZENS. The Senator said that Resolution 44 was ineffective. Will he tell us before he concludes why Resolution 44 was ineffective?

Mr. WALSH. It was ineffective, as I think I stated, because of appeals to the courts. In cases where attempts have been made to hold elections the claim has been made that the Board had no legal authority; the cases have been brought into court, and they are in the courts and undecided. It has been effective where the employer was willing to cooperate with the Board and hold elections; it has been effective in that respect; but where there has been resistance there has been no effect.

Mr. COUZENS. Would the passage of the pending bill remove the appeals to the courts?

Mr. WALSH. Yes; it would because it limits appeals. It provides for review in the courts only after the election has been held and the Board has ordered the employer to do something predicated upon the results of the election.

Now, let me proceed. I was stating the effect of Resolution 44.

What does the pending bill do? It does two things: It seeks to make effective the right of employees to organize and engage in collective bargaining. To that I have heard no objection. It also defines what is improper or unfair for the employer to do in trying to prevent the accomplishment of that objective. These are called "unfair labor practices."

Why does it deal with the employer and say, "You cannot coerce any employee"? Here is the fundamental problem involved in all this: The employer is the only person who can effectively coerce an employee.

Mr. HASTINGS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Delaware?

Mr. WALSH. I will yield when I shall have finished the thought. The employer has the economic power; he can discharge any employee or any group of employees when their only offense may be to seek to form a legitimate organization among the workers for the purpose of collective bargaining. This bill declares that is wrong. It declares that the employee has the right to engage in collective bargaining, and it says, "Mr. Employer, you must keep your hands off; you shall not use that effective power of dismissal from employment which you have and destroy the organization of the employees by the dismissal of one or more of your employees when they are objectionable on no other ground than that they belong to or have organized a labor union."

I now yield to the Senator from Delaware.

Mr. HASTINGS. Mr. President, my clear recollection is that during the textile strike the newspapers carried a story to the effect that the members of the union who were responsible for the strike sent their own crews, their own **[7659]** groups, to other mills where the union did

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not prevail and made it so uncomfortable for the employees at the other mills that they were compelled to quit work and close the mills. Is that a thing the Congress would like to approve of, in the first place, and, if it is not, would not the amendment offered by the Senator from Maryland prevent that sort of thing?

Mr. WALSH. If that happened under present conditions and under the present law, a court of equity could now restrain it, but this proposed board is not an appropriate tribunal to restrain that sort of thing, as is clearly pointed out in the committee report. That is the trouble. There is plenty of law otherwise to deal with that sort of thing, and I will come to that in a moment.

One of the reasons why personally I am one of the few Senators here who do not particularly engage in running debate is that I think the more effective way to present a case to the Senate is for the Senator who moves an amendment to discuss and explain it, and then let the answer be made, because otherwise there is iteration and reiteration which consumes the time of the Senate. Therefore I should like to be permitted to continue my argument, because before the conclusion of my presentation I expect to deal with the subject the Senator raises.

Mr. VANDENBERG. Mr. President, may I ask the Senator a question?

Mr. WALSH. Certainly.

Mr. VANDENBERG. The Senator from Massachusetts has said, as I understand, that the proposed law changes the existing status only in two fundamental particulars. Will he discuss before he concludes whether or not it does not change another fundamental proposition, namely, the right of the majority to control the minority, the existing status under the Executive order of the President, as I understand, being that there is proportionate representation in connection with collective bargaining?

Mr. WALSH. I will be glad to discuss that question.

Mr. VANDENBERG. Is not that another fundamental difference?

Mr. WALSH. I would not say so. It is fundamental to the extent of that part of the bill which relates to designating who shall be the representatives of the employees in collective bargaining. If a labor union is going to be organized, there has to be someone to speak for the employees, and that someone must be the representative of the majority; but that does not prevent the other employees discussing their grievances with their employer. It means that for the purpose of collective bargaining, when the representatives of the employees knock at the door of the employer, he will say, "Do you represent a majority of my employees? If so, all right; come on and I will undertake to engage in collective bargaining with you as the chosen representatives of my employees." That is all it means.

Mr. WAGNER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from New York?

Mr. WALSH. Certainly.

Mr. WAGNER. There is no Executive order, so far as I know, that provides for proportionate representation. When I was Chairman of the National Labor Board, there was an Executive order which directed the Board to provide for elections, after which those selected by the majority were to represent all in the collective-bargaining process.

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Mr. VANDENBERG. Mr. President, will the Senator forgive another interruption, because I am anxious to be sure I understand this phase of the situation?

Mr. WALSH. I yield.

Mr. VANDENBERG. So far as the great automobile industry is concerned, it is operating, is it not, under the Presidential order which recognizes, in effect, proportionate representation?

Mr. WAGNER. An automobile labor board was appointed to deal with that subject. However, that was a settlement out of court. So far as the fundamental principle to which the Senator has referred is concerned, majority rule is the only sound rule in collective bargaining.

Mr. ROBINSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Arkansas?

Mr. WALSH. Certainly.

Mr. ROBINSON. If we recognize the right of collective bargaining, does it not follow of necessity that we must deal with representatives chosen by the majority? Otherwise, the problem would be reduced to an absurdity. If we had to recognize one minority we would have to recognize other minorities, and so we would defeat the entire purposes of collective bargaining if we should adopt any other rule than that of recognizing the representatives chosen by the majority.

Mr. VANDENBERG. That might be an absurdity, but that is the fact acknowledged in the order of the President settling the automobile difficulties. As I understand, under the pending bill the majority chosen to speak collectively in a given unit thereby automatically speak for the entire unit.

Mr. WALSH. Yes; but this discussion is, of course, not germane to the amendment pending.

Mr. VANDENBERG. Oh, I understand that.

Mr. WALSH. Let me say that the bill requires no employer to sign any contract, to make any agreement, to reach any understanding with any employee or group of employees. The trouble about the bill is that it is so much misunderstood. Let me state just what the bill does not do, for it is greatly misunderstood and much misrepresented.

The board created in the bill is not going to be empowered to settle all labor disputes. Indeed, we can perhaps best understand the limited but important provisions of this bill by reciting, first, what aspects of the employers' relationship with employees the bill does not deal with.

Nothing in this bill allows the Federal Government or any agency to fix wages, to regulate rates of pay, to limit hours of work, or to effect or govern any working condition in any establishment or place of employment.

Nothing in this bill requires any employee to join any form of labor organization.

Nothing in this bill requires the employees in any industry to organize.

Nothing in this bill requires an employer to compel his employees to organize. All employees are free to choose to organize or not to organize, to join any or whatever labor organization or union they

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choose. If employees choose to organize a shop committee or a union for a particular plant or company, they may do so. If employees choose to form a union affiliated with any national or international organization, they may do so. There is nothing in this bill that compels any employer to make any agreement about wages, hours of employment, or working conditions with his employees.

The bill does provide the means and manner in which employees may approach their employers to discuss grievances and permit the board to ascertain and certify the persons or organization favored by a majority of the employees to represent them in collective bargaining, when the question of that representation is in doubt or dispute. Beyond this the bill does not go.

A crude illustration is this: The bill indicates the method and manner in which employees may organize, the method and manner of selecting their representatives or spokesmen, and leads them to the office door of their employer with the legal authority to negotiate for their fellow employees. The bill does not go beyond the office door. It leaves the discussion between the employer and the employee, and the agreements which they may or may not make, voluntary and with that sacredness and solemnity to a voluntary agreement with which both parties to an agreement should be enshrouded.

When a dispute arises between an employer and a group or groups of employees as to which organization is the legal one, the company union, the A. B. C. union, the fellowship union, or the trade union, the board takes jurisdiction, and thus is determined who and what kind of a labor organization represents the employees. The board will arrange for **[7660]** an election and provide for secret ballot. It will then find out what organization represents the majority of the employees and who are to be the representatives.

What is the second feature? It is well known from experiences between employers and employees that employers at times, though not all of them, seek to deny their employees the right to organize, and do so by indirect means, by economic pressure of one kind and another. They sometimes seek to dictate the kind of organization. In some instances they seek to control, by financial assistance and by favors extended to a certain class of employees, the particular kind of organization they desire. All the bill does is to define these as unfair labor practices, on the part of the employer and say, "These things you may not do, because your employees must be free to say what kind of organization they want, whether a company union, a trade union, a fraternal union, or whatever it may be. You must keep your hands off. You may not dismiss a man because he joins one of these unions. You may not dismiss a man because he is a representative chosen by his fellows."

In substance, reduced to a very few sentences, that is really all there is to the bill.

Let me emphasize again: When the employees have chosen their organization, when they have selected their representatives, all the bill proposes to do is to escort them to the door of their employer and say, "Here they are, the legal representatives of your employees." What happens behind those doors is not inquired into, and the bill does not seek to inquire into it. It anticipates that the employer will deal reasonably with the employees, that he will be patient, but

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he is obliged to sign no agreement; he can say, "Gentlemen, we have heard you and considered your proposals. We cannot comply with your request"; and that ends it.

There is no effort in that respect to change the situation which exists today. All employers are left free in the future as in the past to accept whatever terms they choose.

There is practically no change whatever in the present conditions affecting employers and employees except to provide for the creation of the machinery without interference by employers to permit employees to choose representatives to go to their employers for the purpose of collective bargaining. This is done because we have found that the reason why there are labor difficulties, labor disputes from time to time, is that employers will not confer with their men, will not meet them, do not know who are their representatives, because some of them say, "I will talk with this group but not with that group." The bill would provide that the men chosen by the employees shall represent their fellow employees and would say to the employer, "They are legally here to deal with you and engage in collective bargaining."

Mr. ROBINSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Arkansas?

Mr. WALSH. Certainly.

Mr. ROBINSON. I wish to ask the Senator from Massachusetts a question. It has been repeatedly stated in criticism of the bill that it outlaws the company union. I inquire of the Senator from Massachusetts whether that is correct and, if so, how the end is accomplished?

Mr. WALSH. I shall be pleased to answer the Senator's question and he will pardon me if I take a little time to do so.

After section 7 (a) was adopted the representatives of organized labor in the country felt that the time had come to extend their activities in the way of organizing employees where there were no labor organizations. In many sections of the country employees proceeded to try to organize unions of one kind or another. Certain employers, for the purpose of preventing what they thought was an antagonistic or hostile labor union, began organizing what are known as "company unions." They got a majority of their employees to form a union and to choose representatives from that union to represent them in collective bargaining.

Much contention, resulting in many strikes, followed. There were counterclaims by the trade-union organizers and the company-union organizers as to which had a majority of the employees in a particular shop, with the result that elections were demanded and held.

This bill gives no legal sanction or approval to any labor organization whatever. It does not mention the name "trade union" or any other national or local labor organization. It does not mention the name "American Federation of Labor." It does not mention the name "company union." It does this, which some employers who have company unions resist; namely, it restricts somewhat the methods now pursued in financing company unions.

In some company unions the employer hires the hall where the union meets, pays for the ballots, employs clerical help for the union,

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pays salaries to the representatives of the workers. This is called, among the employees, a "company-dominated" union. That is why the Senator from New York uses that expression, meaning that it is not free, because the financial hand and the influence of the employer are such that they become dominating, and it is not a union such as free employees are entitled to have if they choose.

So the result is that we restrict contributions made to any union—the American Federation of Labor or the company unions; and money can be paid by an employer in the case of either one of them—the American Federation of Labor or any other trade union or any other international union—only to the representatives of the employees when they are, during working hours, sitting in with their employers, engaged in collective bargaining. We permit that to be done; but the other expenditures which have been made in the past have been the source of some criticism.

Personally, I feel in any law no distinction ought to be made between company unions and trade unions. If company unions are wrong, if they are not representative of the men, if they are not really engaged in honest collective bargaining, we must give the employees of this country, men and women, credit for recognizing that and overthrowing, in time, such organizations. Similarly, if the American Federation of Labor or any other union is not honestly and sincerely and devotedly interested in the welfare of its members, we must recognize the fact that sooner or later the employees belonging to it will, in some election, move out of the American Federation of Labor and into an international union or other union of some kind, a different union of their own.

Mr. WAGNER. Mr. President, I am sure the Senator meant to name one other common practice of these company-dominated unions. In nearly all cases, their constitutions are drafted by the employer, and contain provisions preventing modification without the consent of the employer.

Mr. WALSH. What the Senator from New York has said is very important. We found at our hearings that many of the company unions had had their constitutions and bylaws prepared by the employers and handed over to them, and there are provisions in the constitutions and bylaws that no changes can be made without the consent of the employers. Of course, such an organization is not a free labor organization, and cannot be held to be such.

Directly answering the Senator from Arkansas [Mr. ROBINSON], I should say that there is nothing in this bill which is antagonistic to company unions except that some of them will have to lessen the amount of contributions made by the employers to the representatives of the employees in company unions; but they are permitted to make the expenditures I have named.

Now we come to the immediate problem under consideration.

We have not gone in this bill into the field of relationship between employee and employee. We have been dealing only with the right of the employee to engage in collective bargaining with his employer. If an employee threatens to burn the house of a fellow employee unless he joins his union, there is ample provision of law to cover such a case. If an employee or employer assaults an employee, there is ample existing law to cover that case. That is a domain that we have not

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entered into, because we are not dealing with it, We are not going to encourage or discourage employees with **[7661]** reference to organizing unions. It is made their business, but if they desire to organize, this bill provides the method and protection to do so.

Many employers have urged that the bill should contain a provision to the effect that it constituted an unfair labor practice for an employee or a group of employees to interfere or coerce an employee to join any particular labor organization.

They have indicated that the bill would be acceptable to them if such a provision was included in the bill, because they stated it would put both employees and employers in a like status so far as interference or coercion by employee or employer with respect to joining or refraining from joining a labor organization is concerned.

The committee carefully considered this proposal and reached the conclusion that such an adoption would be unwise and that this principle was founded upon a misconception of the bill.

An employee, like an employer, of course, has the right to discuss the merits of any organization. Indeed, Congress could not constitutionally pass a law abridging the freedom of speech.

On the other hand, an employee, like an employer, cannot lawfully use threats of physical violence, or inflict physical damage upon persons or tangible property. If he does so, the civil and in many cases the criminal laws of the several States could be invoked, and he could be fined or sent to jail.

The bill now under consideration does not enter into these realms of free speech or physical violence. It does not establish a police court. It does not deal with physical coercion, but with economic coercion. And economic coercion is a weapon that could be exericsed by the man who hires and discharges, and not by a fellow employee. Only an employer has it within his power to use economic pressure.

The use of the clause suggested has another danger that is not immediately apparent, but against which it is necessary to guard. The Supreme Court of the United States in the Hitchman case, and State courts in other cases, have construed the word "coercion" to embrace strikes and picketing. Strikes and picketing are in many cases unjustifiable and unwise, but the purpose of this bill is not to outlaw all strikes and all pickets. Yet if Congress were to make it an unfair practice for an employee to coerce his fellow employees to join or to refrain from joining an organization, some court, relying on earlier decisions, and not adequately informed of the purpose of this bill, might conclude that strikes and pickets had been made unlawful.

I hope I have removed some of the prevailing misgivings and misrepresentations concerning this bill and retained respect for the purposes of this legislation. The bill is intended to provide a medium and method of peaceful settlement of disputes arising over employees' rights to organize and to assure employees protection against interference and coercion by their employers.

This is not intended to be a reflection upon the employers of this country. For most of them no such legislation is needed. For most people no statute is needed preventing larceny, but because there is a statute forbidding larceny there is no intention to reflect upon the honesty and law-abiding spirit of our people. This bill is intended

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to restrain that class of employers who have failed to realize the thing we call social justice as between employer and employee.

If employers accept the law in a friendly and cooperative way, and if employees realize that these rights are granted not for the purpose of arousing hostilities or misunderstandings between them and their employees but for the purpose of paving the way for cooperation and mutual progress, it should instill and promote better relations between all classes and groups in industry.

When an employer undertakes to interfere because he does not want a labor union among his employees, dismissing and discharging people in various ways, or ordering them out of the tenement houses of his company because they have joined a union, that is a coercion and an interference, this bill declares, over which this National Labor Relations Board shall have jurisdiction.

The courts will have in the future all the jurisdiction they have ever had in relation to all the differences which arise between employers and employees; but this newly created board will have jurisdiction only over the things that relate to the election of representatives of employees, and only in the prevention of the unfair practices that impede and stop the worker from organizing and engaging in collective bargaining with his employer. * * *

[7666] Mr. CLARK. I should like to call the Senator's attention to a rather peculiar definition and construction of interstate and intrastate business which was developed by the testimony before the Finance Committee, and which gives an illustration of the very peculiar view of intrastate commerce and interstate commerce entertained by N. R. A. officials in some particulars.

We had before the committee a case where a man was engaged in the business of manufacturing ice in a small town in the interior of Florida. The testimony was to the effect, and the record showed, so far as the N. R. A. was concerned, that none of the products of the man's ice factory were sold outside the small community in which he was located; but the N. R. A. asserted and maintained, and undertook to get the Federal Trade Commission to hold, that the man was engaged in interstate commerce because a competitor, located some 8 or 10 miles away, did ice a railroad train which crossed a State line.

Mr. BORAH. Mr. President, of course, rules and regulations can be made which will annoy an intrastate dealer into submission. I do not know, of course, that that is the program; but I do know that in the past people who were **[7667]** dealing with wholly intrastate matters have been repeatedly notified that they were subject to the control of the National Recovery Act and finally whipped into submission.

There can be no justification for objecting to removing intrastate business, unless it is proposed that that practice continue.

With reference to this matter of intrastate commerce, I shall not delay the consideration of the bill by going into a discussion of it today; but when the A. A. A. amendments come before the Senate, I think there will be justification for going into a discussion of it at some length. I shall not do so today.

Mr. President, we passed a joint resolution eliminating two propositions from the National Recovery Act, price fixing and intrastate

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business, I cannot understand upon what theory anyone should be in favor of retaining price fixing or the power to exercise an unconstitutional authority. I venture to advise those who oppose this resolution that no further concessions will be accepted.

Mr. STEIWER. Mr. President, I desire to address a question to the Senator from Idaho, if he will permit it. In connection with his denial of the jurisdiction of the Congress to legislate with the respect to intrastate business, I assume, of course, that the Senator from Idaho. with his wide knowledge of the decisions of the courts, would recognize that the Congress may deal with intrastate business in a case where such business burdens or affects interstate commerce. There is no contention upon that score, I assume.

Mr. BORAH. Not quite as the Senator states it. Congress may always deal with interstate commerce, and if, in the exercise of its power to regulate interstate commerce, it must deal with obstacles placed in the way of the exercise of that power by intrastate action, it may remove them.

Mr. STEIWER. I agree with the Senator's statement last made, and thank him for his categorical answer to my question. I detain the Senate merely long enough to make one observation with respect to it.

The poultry case, so called, is before the Supreme Court of the United States; the National Labor Relations Board bill is before the Senate today. Running throughout the pending legislative proposal, throughout the theory of the N. R. A., and throughout much other legislation which we have considered, and which we are bound to consider further, is the idea that Federal jurisdiction has attached to intrastate activities because in one way or another they affect or burden interstate commerce, or that character of commerce which the Constitution defines as commerce among the several States.

I take it from what the Senator from Idaho has said that he does not quarrel with the general rule; nor do I. I think it is perfectly clear, under the doctrine of the railroad rate cases, like the Minnesota case, and the Shreveport case, and the case involving interpretations of the Grain Futures Act, and other cases which the Supreme Court has decided the Congress does have jurisdiction to legislate with respect to certain intrastate activities when they are so interrelated with interstate activities that the regulation of the latter cannot be had without the regulation of the former, or in cases where the intrastate transactions burden the interstate commerce. I am personally willing to vote upon the pending bill, yet it has seemeed to me that we are acting prematurely with respect to it. The question of jurisdiction of the subject matter of the bill apparently is intertwined most closely with the same question involved in the consideration of the National Recovery Act.

I favor the purposes of the pending labor disputes bill but I would feel freer in my consideration of the bill if the Supreme Court had already spoken and had defined more fully and with more particular reference to the thing that is now uppermost in the public mind the jurisdiction of the Congress to deal with various aspects of intrastate activitity, which in many instances is not even commerce, but concerning which jurisdiction is claimed in the Congress because of some supposed relation to interstate commerce.

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I say that because it is most apparent that one important thing for us to consider at this moment with respect to pending legislation is to determine where the constitutional jurisdiction of Congress begins and where it stops.

In making this statement I do not oppose what the Senator from Idaho just said in behalf of the joint resolution agreed to yesterday. I was in agreement with the position of the Senator from Idaho. I think he has very well stated today the argument in favor of the action taken by the Senate. It seemed to me then and seems now that there is no conceivable justification for the effort of Congress to take final action in connection with the National Recovery Act until the Supreme Court shall have defined the jurisdiction of the Congress to such an extent that we can say with certainty that we know our power and know that which is denied to us under the organic law of the country. In our haste to dispose of the pending labor legislation we invite troubles which will plague us later if the Supreme Court shall deny our jurisdiction to enter into the field of intrastate relationships.

Mr. BARKLEY. Mr. President, will the Senator from Idaho permit me to ask him a question in that connection? I do not wish to discuss the joint resolution we have passed; that is water over the dam, and I do not want to delay the bill now under consideration. But inasmuch as the power of Congress is under discussion, the subject having arisen on account of the discussion of Mr. Richberg, I observed this morning—and I do not know whether the Senator from Idaho was present in the Chamber or not—that in the Shreveport case the Supreme Court held that Congress was free, whenever it occupied the field of regulation, not only as to interstate carriers, but as to intrastate carriers where their practices and their rates and their policies operated as a burden on interstate commerce. In that decision the court held that not only did Congress have power to act, but that it was the duty of Congress to protect and promote interstate commerce against such practices as might be burdens on interstate commerce.

There is no difference between a carrier and the thing it carriers under the commerce clause. The power to regulate commerce, insofar as it goes, extends to those who carry commerce as well as to the things which they carry. Does the Senator believe that the Court would likely render a different decision in determining the power of Congress to regulate the thing carried from the decision it rendered with reference to the thing that carries the article of commerce?

Mr. BORAH. If the Court were called upon to regulate the thing carried, and if, in regulating the thing carried, it necessarily came in contact with obstacles which had been placed there by intrastate commerce, it would render the same opinion, in my judgment, that it did render with reference to the instrumentality of carriage.

Mr. BARKLEY. It has been my feeling that the court would not differentiate between the thing carried and the carrier.

Mr. BORAH. I would think so. I merely wish to say this since the Shreveport case has been referred to very many times as announcing something in the nature of a departure from or widening of the construction of the commerce clause. In my opinion—and I will undertake to demonstrate its soundness in a few days—the Shreveport case announced no principle with reference to the construction of the

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commerce clause that is not found clearly announced in what is known as the "Steamboat case", or the case of Gibbons against Ogden, where the opinion was written by John Marshall in 1824. They held in that case, in the very beginning, in the first opinion ever handed down under the commerce clause, that the power of Congress over interstate commerce was full and complete, and that it might be exercised in order fully to protect interstate commerce as against any obstacle which a State might interpose.

In that case the State had granted a monopoly for steamboats upon the Hudson River, and it was claimed that the commerce was intrastate, and was therefore subject to the control of the State alone. But the Supreme Court in that case held that it was an obstacle, an intervention to the full exercise of the power to regulate commerce crossing boundary **[7668]** lines. I do not think the Shreveport case states any different principle.

SETTLEMENT OF LABOR DISPUTES

The Senate resumed the consideration of the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Maryland [Mr. TYDINGS].

Mr. NORRIS. Mr. President, I hope I will not be considered discourteous to my brethren, or out of order, if I offer a few remarks upon the question before the Senate. I approach the pending amendment offered by the Senator from Maryland [Mr. TYDINGS] and the other amendment to be offered later by him, and desire to discuss them together.

I realize that it is a difficult thing always to differentiate, when considering language proposed in a legislative measure, when we are trying to legislate and control the controversy that has always existed and still exists between capital and labor. I listened to the Senator from Massachusetts [Mr. WALSH] with very deep interest. I thought he stated very fully and properly the purpose of the measure which is designed to cover a very difficult situation.

I admit that it would be very difficult to object to the amendment now pending, standing alone, if it affected legislation on a subject where normal conditions exist. At first blush the amendment seems to be absolutely fair, absolutely right, as a proposition of logic or of justice; and, weighed and applied to most of the ordinary affairs of life, there could be no objection to it. So I realize, to begin with, that it is very difficult for me to express in language really comprehensible by myself the real philosophy of the objection. I think, with the Senator from Massachusetts [Mr. WALSH], that we cannot properly consider this question unless we consider it in the light of its history and in the light of the parties interested in the case, and their power.

Mr. WALSH. Mr. President, will the Senator yield?

Mr. NORRIS. I yield.

Mr. WALSH. Of course the fundamental difference which is arrived at immediately is that whatever coercion there is among employees is

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open and aboveboard; it can be seen and can be detected; but coercion exercised by an employer upon an employee is subtle, underground, economic, and the employer has power of this character over an employee which no employee has over another employee.

Mr. NORRIS. Again the Senator from Massachusetts has stated very effectively and concisely what I think is, in part, the real issue. On the one side is the employer, and on the other is the laboring man, the employee. One, the employer, has almost unlimited economic power in dealing with the other, the employee. The employee has no economic power. The employer holds in his hand the welfare, perhaps even the right to live, not only of the employee but of his family. His economic power can be enforced, as the Senator from Massachusetts has well said, through channels and by means often almost impossible, if not absolutely impossible, to detect. He has many methods of exercising his economic power. The employee has none. Again, the employer's economic situation is not so precarious as that of the employee. He often has other means of living, other means of making money, other means of going on if his business should be closed up. That is not always true of the employee. It may sometimes be true but ordinarily the employee has no other means of livelihood, no other means of supporting his family, his wife, and his children, of clothing them and of feeding them, than what he gets from his employment. He is, therefore, almost helpless in the economic situation when he runs up against the employer.

That is not all, Mr. President. We ought to consider this amendment in the light of history running back a great many years. I did not know this question was going to arise or that I was going to make any remarks on it today. Had I known that I should have attempted to prepare myself with some citations and with some of the history of injunction proceedings which have been had for many years between capital and labor. I can only refer to that history in a general way, as I remember it, in view of the fact that I have not studied it for a year or two past.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. NORRIS. I yield.

Mr. TYDINGS. I agree with what the Senator from Nebraska has said, and I can sympathize with his desire to protect the laboring man from interpretations of the law which would be injurious when no injury is intended; but I say with all deference to the Senator from Nebraska that, in my judgment—and I am probably wrong; but, at least, it is my view—we are debating something which I have not been able to explain to the Senate, at least as I see it. If the Senator will bear with me, I shall try to make my position clear.

As the section now reads, it simply says:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Let us suppose that was all there was to it. I do not desire to take that right away from the employees. I do not desire to put language in the bill which may be interpreted as weakening the language already in the bill; but, in order that the employees shall have the right which is provided in the bill, my amendment stipulates

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that, without any coercion, without any intimidation, they "shall have the right to self-organization, to form, to join, or assist label organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining", and the like. The amendment explicitly provides that in the enjoyment of such right nobody shall coerce or intimidate them.

I probably do not have a clear conception of the issue, but it seems to me that my amendment clarifies the rights of labor.

Mr. NORRIS. The Senator may be right, of course. I have no idea but that his object is to clarify and that he has not any object which is detrimental to a condition which we all agree ought to exist. If there did not recur to me what I have learned of the injunction question from my study of it extending over quite a number of years, if I did not remember the hearings in which I have listened to presentations on both side for months, if I had not that experience, and if I had not the ideas which are now back in my brain which were pounded into me during long and tedious debates, I should jump to the conclusion at once, and say there is no possible objection to the Senator's amendment.

Mr. WALSH. Mr. President, will the Senator yield?

Mr. NORRIS. I yield to the Senator from Massachusetts.

Mr. WALSH. Unfortunately, the Department of Labor, the members of the National Labor Relations Board, and representatives of organized labor do not think the proposed language clarifies the bill, but rather that it destroys the effective purpose of the bill.

Mr. NORRIS. I agree to that statement.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. NORRIS. I yield.

Mr. TYDINGS. I wish to ask the Senator a question.

I am slightly familiar with the situation he is presenting, namely, that coercion clauses and intimidation clauses, so to speak, have been used against labor rather than for the protection of labor. I am familiar with that particular subject in a general way, though not profoundly so; but it strikes me—I may be wrong about it—that the way those clauses are used in this particular connection is not the way in which they have been used, concerning which the Senator is speaking. It seems to me that such clauses have not been used to further collective bargaining, but have heretofore been employed to prevent the use of collective bargaining, to coerce or intimidate anyone; whereas I pro-**[7669]**pose by my amendment to protect collective bargaining from intimidation and coercion.

Do I make myself clear to the Senator?

Mr. NORRIS. I think the Senator does.

I will say, Mr. President, that when I was first interrupted by the Senator from Maryland I was about to take up the review, in a very brief way, of the history of the injunction process between capital and labor, which, I think, has a direct bearing on the construction of the words of this amendment; and I think my discussion of the question will be an answer, so far as I am able to give an answer, to some of the questions propounded by the Senator from Maryland.

First, the Sherman antitrust law was passed at a time when none of us was in the Senate. No one thought there was a labor question

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involved in it. The idea of the law was to protect persons in their business, and prevent business from being handicapped by unjust and unfair methods of competition. But, as it developed, the Sherman antitrust law became a weapon by which labor was almost crushed out of existence because of the construction placed upon the law by the courts.

We passed the Clayton antitrust law amendatory to the Sherman antitrust law. The Clayton antitrust law was passed during the official lives of some of us who are now here. That law was held by many persons to be a new charter of freedom for labor. However, it did not do labor that much good. The constructions which were put on that law by the courts from time to time practically took away all its force and effect.

In the hearings, which went on for 3 years or so, during all of which I had the honor to preside, and in which I heard every word of the testimony, the history of these injunction suits was given, and the opinions of the courts were presented, showing that there was a gradual movement toward the domination of capital over labor. It then seemed to me, and I think those who studied the question were convinced, that on account of the existence and exercise of the economic power of which I spoke awhile ago, Congress was justified in putting forth its strong arm again to see if it could not protect labor, and we passed the anti-injunction bill.

There was not very much consideration on the floor of the Senate, but before the committee the hearings during that time lasted for over 2 or 3 years. The thing that brought about the changes of which I have spoken was, in the main, the issuance of injunctions by the courts, giving a different construction to the laws, I believe, from that which was intended to be given to them by those who enacted the laws. After all, the courts are going to construe this measure, if it shall become a law, and when they get through with it, as often happens, we may not know our own child. We are, to a great extent, a country controlled and governed by injunctions. One man sitting as a district judge can nullify, by a stroke of the pen, the acts of the President, the Senate, and the House of Representatives, even though their action be unanimous.

The history of these injunctions shows that the general trend was to construe the laws as capital wanted them to be construed. I have now in mind an injunction issued by a district judge in the case of a strike in which injunction it was specifically stated, in so many words, that every one of the employees was enjoined from telling anybody that there was even a strike on at a certain mill. A laboring man in that mill violated the injunction if he told his wife the next morning why he did not go to work. Was there anything in the law that justified such an injunction? As I see it, I do not think there was. Congress thought that it had obviated such a thing as that when it passed these different laws, but, in view of the way the courts construed them, it had not done so.

Other injunctions enjoined not only the laborers but the entire public from contributing any money to the support of a laboring man who was on a strike. They enjoined a doctor from giving him medical attention, a lawyer from giving him legal advice as to what his rights were in that very case. A laborer had no right, under the

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injunction, to consult an attorney. A coal dealer had no right to sell one of them coal.

The court enjoined the laborers from appealing a case where the employer had commenced an action of forcible detainer to put them out of the shanties which the employers call houses and sometimes even stretch the word so far as to call them homes. It enjoined anybody from furnishing him a bond in case he was dissatisfied with the action of the lower court and desired to carry it up to the higher court, in which case, under the law, he had to give a bond, if he took it up, to pay a reasonable price for rent while the appeal was pending. That was enjoined. The law of the State provided that if a man was living on a rental basis in a house which somebody else owned, if the owner wanted to put him out, and claimed there was a violation of the tenant's contract, he could sue out a writ in a justice-of-the-peace court, and if the justice decided against the laboring man or any other man, whoever he might be, he had a right to appeal the case to a higher court, but in order to do so the tenant had to give a bond that he would pay the rent on the house during all the time he occupied the premises. So there could be no possible loss on the part of the big corporation that owned the little shanty. Yet the courts have enjoined—there are actual cases that can be found in the books if Senators will examine them—anybody from furnishing a laboring man a bond to enable him to go up to a higher court. The facts in some of those cases show that the friends of the laboring man were ready with the bond; that there was no question about its sufficiency, but they were enjoined from furnishing it. The laboring men could not dare ask a lawyer what their rights were. That was contrary to the injunction.

They were prohibited from making speeches or telling anyone else anything that happened. The result was that some of these men, without jobs, wandering around on the streets, and without the ability to tell anybody what was the matter, became almost crazy, wild. You can imagine, Mr. President, what kind of feeling that would engender in the heart of a man.

Suppose the pending amendment were agreed to and some laboring man should meet some other laboring man and say to him, "I should like to have you strike", or "I should like to have you join my union", what would there be to hinder one of the courts holding that that was coercion and issuing an injunction in such a case? "You may not coerce." I would not think such an act was coercion; the Senator from Maryland would not think it was coercion, of course; we would not have agreed, either one of us, with the construction placed by courts on the various acts that Congress has passed.

If it were an ordinary case, I would not hesitate to say that I would accept the amendment, but when I remember that in these great controversies which are so one-sided, and where the employer has countless ways by which he can coerce if he wants to, without anybody even finding it out, I have no doubt that the amendment ought to be rejected.

I do not want to be understood as saying that the amendment is not offered in good faith; I believe it is. I am not questioning the good faith of the Senator from Maryland or of anyone else who supports the amendment.

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Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. NORRIS. Yes.

Mr. TYDINGS. In the case the Senator has been using as an illustration, did the law, as it then existed, provide in effect that the employees should have the right to bargain collectively through representatives of their own choosing, without coercion or intimidation from anyone?

Mr. NORRIS. No; I will say to my friend, I do not think it did. I am not trying to state the law. These statutes were enacted years ago; I am not claiming the law was the same then as it is now; but I am trying to illustrate how easy it is for a judge who is friendly to capital and opposed to labor to render a decision by which he will make the laboring man absolutely helpless. That is all I am trying to do.

[7670] Mr. TYDINGS. I sympathize with the Senator's philosophy in that respect, and it is my own. I want laboring men to have the right to bargain collectively, and so on, without interference or coercion; but, if the Senator will permit me—and I do not want to appear impertinent—it strikes me that this amendment is clearly without the purview of the decisions referred to by the Senator.

Mr. NORRIS. I will say to the Senator, I will not quarrel with him about that; I agree to that; but I do not want some judge who may not agree with us to use it as a leverage by which to issue an injunction against some poor fellow who is helpless.

Mr. TYDINGS. I think I see the Senator's viewpoint; but I am not altogether clear, because it is difficult to understand whether he sees mine. As I understand these words, if they are not put in the bill the right of collective bargaining exists, and if they are put in the bill it not only exists but no one may coerce or intimidate anyone in an attempt to take it away. It strikes me that is the only thing before us.

Mr. NORRIS. If I knew the Senator from Maryland were going to be the judge every time such a question came before the court, I would not object to the amendment. If we were sure of having such a judge as he, it would not be necessary to have the pending bill here; it would not be necessary to have other laws. A great deal of our time has been taken up in order to meet the construction that may be put upon our action by the courts.

We realize when we pass a law that we do not know whether or not it is a law, even after the Senate and House have passed it and the President has signed it, for some judge in Maine or California or Florida may have a different opinion from the 532 men who enacted the law, and the judge may say, "You ought not to have passed it; I will issue an injunction to restrain its enforcement." I do not mean that as a criticism of the courts in general, because I think, as a rule, they embrace the highest class of men in the United States; but, as in the case of Senators and Members of the House—they are not all of that kind; they are like any other group of people.

Mr. WALSH. Mr. President, will the Senator yield?

Mr. NORRIS. I yield.

Mr. WALSH. I ask the Senator, in view of his study of this question and his experiences with respect to the manner in which courts have handled these problems, if it is not quite probable, and perhaps most

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likely, that courts would construe the efforts of one employee to get his fellow employees to organize a union to be coercion?

Mr. NORRIS. Yes.

Mr. WALSH. In other words, what this amendment, if adopted, will do will be to make a police court out of the board instead of a regulatory body dealing with regulations as to collective bargaining between employers and employees. There is a police court to handle cases of threats, assaults, and attempted murder on the part of one employee against another.

Mr. NORRIS. Mr. President, in conclusion, I wish to say that, in my judgment, we will run a great risk of making loopholes by putting in modifications of some of the powers which are granted in this bill, even though we do it with the intention of making it more explicit than it previously was.

I am expecting great results from this legislation if it is finally enacted. I sympathize with the objects to be attained. I do not want to take any chance of nullifying them by bringing forth decisions from courts which would undo a great deal of the good we had hoped to accomplish. Therefore, out of an abundance of caution, which may not be justified—perhaps, because of my own experience and study of the question, I may have been led too far one way—I cannot resist reaching the conclusions I have tried to state here to the Senate. I know I had no prejudice in the beginning and I hope I have none now. I have none that I know of. I am not aware of it if I have any.

The employer will not be troubled. Do not get the idea that we ought to go out and put safeguards around him; he has always taken care of himself thus far; but we should help the man down in the street who is helpless, who has to eat out of the hand of the other man sometimes, has to do what he tells him he wants done, even though the orders are conveyed to him by indirect means where he cannot directly trace the voice or the hand of his economic master. It is an unjust contest with all the power on the one side and no power on the other.

It seems to me under those circumstances that we ought to reject the amendments of the Senator from Maryland.

Mr. WAGNER. Mr. President, I have before me the Norris Anti-Injunction Act, which I had the pleasure of supporting and discussing when it was before the Senate. At that time I recall the Senator from Nebraska [Mr. NORRIS] called attention to court interpretations with respect to the right of workers to organize and to prosecute strikes which they thought were justified. It was brought to the attention of the Senate that threats to strike had in many jurisdictions been regarded by the courts as coercive acts. A refusal to work on material of nonunion manufacture had been decided by a court to be a form of coercion. Even peaceful persuasion by picketing was regarded in some jurisdictions as a coercive method employed by labor against the employer. It was court interpretation of this type which brought about the passage of the Norris Anti-Injunction Act, designed to limit the abuse of the injunction in labor disputes.

I agree with the Senator from Nebraska that the Senator from Maryland [Mr. TYDINGS] is absolutely sincere in offering his amendment. But I want to state that probably I know a little more about the efforts to procure this amendment to the proposed legislation than does the

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Senator from Maryland. For in my judgment, if we should adopt this amendment, it would practically nullify the effect of the Norris Anti-Injunction Act and would revive the procedure of restraining employees from indulging in normal organizing activities in their relationship with one another.

The whole philosophy of this legislation is to deal with the relationship between employees and employers. For 100 years it has been agreed that the workers of the country should have the right to organize. They were never able to exercise that right because of the economic control of the employer, which enabled him always to thwart the attempts of workers.

This bill was prompted by the desire to have more than a mere reiteration of our constant declaration that the workers shall have the right to organize, more than abstract freedom not protected by law. It proposes that hereafter the employer shall not interfere with employees in their right of organization.

So far as coercion by employees is concerned, the Senator from Maryland need not be concerned, because there is abundant law today to take care of the things about which the Senator is apprehensive. The Senator spoke of intimidation. Under the Norris Anti-Injunction Act, intimidations and threats may now be enjoined by the courts.

I appeal to the Senators that if the amendment is inserted in the bill it will repeal all the salutary features of the Norris Anti-Injunction Act. When workers attempt to organize and a threat of strike results, or when banners are displayed asking workers to join a certain organization, or when workers refuse to work upon material which comes from a nonunion factory, these acts which we thought we had protected by the Norris Act would again fall under the equity jurisdiction of the courts. This would in large measure frustrate and paralyze the efforts of the workers of the country to exercise rights which for 100 years have been recognized verbally.

That is my fear. When the suggestion was first made to me that these additional words should be included in the bill, I had the same experience that the Senator from Nebraska [Mr. NORRIS] had. I, too, felt no objection to the words until, like him, I went to the law library and began to study the old cases and the history behind the anti-injunction legislation introduced and sponsored by the Senator from Nebraska. Then I saw that the workers of the country were being deprived, through the economic pressure **[7671]** of employers, of the power to form organizations. It would be better off to have no law at all than to make this legislation a vehicle for the revival of the labor injunction. That is why I am sure that if the Senator from Maryland had studied the cases involving the misuse of the word "coercion" he would withdraw his amendment.

Mr. TYDINGS. I dislike to be perpetually in these minorities—and I say this without reflecting on anyone—but I remember that about 2 years ago, when the N. R. A. bill was introduced, it was almost treason to oppose it, particularly on this side of the aisle. I certainly received my share of abuse for not voting for it. It was to be the panacea which was to solve all our ills. Now everybody has awakened to the fact that it was perhaps the greatest price-fixing proposal ever

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passed by Congress. So, therefore, what appears to be all lovely and useful to humanity quite often, when it is applied, is not so useful.

I do not think that a single argument has been made against this amendment which is apropos of its written language. We are not arguing here, and there are not involved in this case, the subjects covered in the anti-injunction cases. We are now engaged in making affirmative law. We are giving to labor affirmative rights which theoretically, at least, it did not have before. We are making them clear and unrestricted, and bringing them out in the light of day. If it weakens those rights to say that labor shall have them without coercion or intimidation, then I say all lawmaking is useless, and words do not mean what they seem to mean.

Let me read the section as proposed to be amended. What would the proposed law provide if the amendment were adopted?

Employees shall have the right—

There is no word about employers here. There is nothing about employers. This section tells what rights employees shall have.

Employees shall have the right to self-organization—

In effect, my amendment says:

without coercion or intimidation.

Employees shall have the right to form, join, or assist labor organizations without coercion or intimidation.

Employees shall have the right to bargain collectively through representatives of their own choosing without intimidation or coercion.

Employees shall have the right of collective bargaining or other mutual aid or protection without coercion or intimidation.

In other words, it is held here that the mere insertion of the words "without coercion or intimidation" would weaken the right of labor rather than strengthen it.

If labor has these rights and we provide that it shall not be coerced or intimidated in exercising them, it certainly seems to me we thereby strengthen those rights, make them mandatory, and prevent the employer on the one hand, and extraneous influences on the other hand, from transgressing on the rights which Congress wishes to give labor.

In conclusion, with all due respect to the learned Senators who have taken the opposite view on the floor of the Senate, the so-called "parallel" which they have set up in relation to this section is not a parallel at all. They have been arguing an entirely different case. They have been arguing the intangible or indirect effects of collective bargaining, and not the mandatory, congressionally affirmed effect of collective bargaining without coercion or intimidation.

I realize the viewpoint of my friend from New York. I appreciate his fear; but I desire to say that I do not agree with the point of view he expresses. As I see this particular section, it looks to me like an effort to force every man in America to join a certain kind of union, whether or not he wishes to joint that union; and the coercion and intimidation features are not to be inserted in this section because a certain union desires a free hand to take the workers from the groups in which they now belong into groups into which they may not wish to go.

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That is the naked fact back of the opposition to this amendment. It is an amendment to force all working people into a particular union, and every Senator on this floor knows that to be the truth.

Mr. WAGNER. Mr. President, will the Senator from Maryland yield?

The PRESIDING OFFICER. The Senator from Delaware has the floor.

Mr. HASTINGS. I yield to the Senator from New York.

Mr. WAGNER. I am not going even to allude to the last statement of the Senator from Maryland; but this is not the first time that this subject has been up for consideration by the Senate.

Mr. TYDINGS. That is true.

Mr. WAGNER. When the anti-injunction bill, to which I referred a moment ago, was up for consideration, I remember that there was a proposal to include prohibitions against employees such as the Senator from Maryland now proposes. But it was not accepted, because it came from those not friendly to the legislation.

Mr. TYDINGS. Yes; but why not provide also that he shall be free from other coercion?

Mr. WAGNER. Last year we passed by unanimous vote in both Houses the amendments to the Railway Labor Act, enumerating practically the same unfair labor practices as the pending bill. The same proposal came up before the committee considering that measure and was rejected by a unanimous vote, because the committee saw the dangers of it.

The Senator is not up to date on precedent.

Mr. HASTINGS. Mr. President, I desire to call the attention of the Senator from New York to that to which he has already referred with reference to the public policy of the United States as stated in the Norris-LaGuardia Act, the anti-injunction act:

> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is—

I desire to emphasize those words:

> the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

I desire to call the attention of the Senator from New York to what I am about to state, and to see if it be true; As I read this measure, as late as 1932 the Congress declared it to be the public policy of the United States, first, that the individual worker is entitled to actual liberty of contract, and to the protection of his freedom to labor. Is that true in the present bill?

Mr. WAGNER. That is true in the present bill.

Mr. HASTINGS. What happens under this bill to the worker who is in the minority? Has he any freedom left? Is he not compelled

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to do what somebody else asks him to do, and is not his freedom destroyed to that extent?

Before the Senator answers that question, I desire to ask him another question along the same line.

Is it not true that the individual worker should be free to decline association with his fellows? Can that be true under this bill? Under the act from which I have read, the declaration of Congress was that the individual worker is entitled to "full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment." Those things were assured to the worker. That was the declaration of the Congress; but what I am concerned about, and what I desire the Senator from New York to explain to me, is, in what condition do we find the worker who is in the minority?

[7672] There may be 2,000 employees in one establishment, and there may be 1,100 of them who want to do a certain thing. If the Board describes them as a proper unit for that particular establishment, that means that the 900 will either have to go along with the 1,100, or they will lose their positions.

Mr. WALSH. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. Maloney in the chair). Does the Senator from Delaware yield to the Senator from Massachusetts?

Mr. HASTINGS. Yes; I yield.

Mr. WALSH. In what respect does the Senator think the right of any minority of employees is affected by this bill?

Mr. HASTINGS. If that is not true, then I have misread the bill. Does not the bill specifically provide that a majority of the various units that are to be set up and authorized by the board are to be in, control, so far as wages and other important things are concerned with respect to the worker?

Mr. WALSH. Mr. President, under this bill representatives chosen by a majority of the workers in a particular unit are recognized as entitled to represent the workers in that unit for the purpose of collective bargaining with the employer, following a similar provision in the Railway Labor Act. It would be obviously impracticable to have two collective agreements, with differing terms as to wages and conditions of employment, covering the same categories of workers in an appropriate unit. Who, then, should represent the employees in negotiating the agreement? Obviously, the representatives chosen by the majority of the workers in the unit affected, in accordance with democratic principles; otherwise the employer will be enable to profit by exploiting a division in the ranks of the workers, by playing off one group against another in the negotiations, and thus defeating true collective bargaining. Minority groups and individuals are permitted by the bill to present grievances to the employer. But any agreement arrived at with the majority representatives necessarily is applicable to all the workers in the unit. If a dissenting minority do not like the terms of the agreement, there is nothing in the bill which prevents the minority from quitting or striking.

Mr. HASTINGS. Will the Senator be good enough to tell me what section that is?

Mr. WALSH. It is the theory of the whole bill.

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Mr. HASTINGS. The theory, but I want to find out what is actually provided.

Mr. WALSH. It provides for elections.

Mr. HASTINGS. Does the Senator know what section it is?

Mr. WALSH. Section 9 gives the board power to conduct elections, and declare who are the majority representatives, and then provides that such representatives shall be the collective-bargaining agency for all the workers in the unit. That is what the election is held to determine.

Mr. HASTINGS. Let me read to the Senate what section 9 provides:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit.

If I understand the bill, a unit does not necessarily mean the employees of a certain corporation, but the unit may be a unit of employees scattered all over this country, and if a majority of that unit decides on a certain thing, then the majority of that unit can make a bargain for the employees of a certain corporation where none of them want that particular thing.

Mr. WALSH. The appropriate unit depends so much upon the facts of the particular case that necessarily the Board must determine the unit, as is also provided in the Railway Labor Act. But, as I have said, a minority group is not bound by the agreement negotiated, that is, they are free to quit or strike. For that matter, nothing in the bill prevents the majority from striking, though the testimony before our committee indicated that unions have had a generally good record in abiding by agreements.

Mr. HASTINGS. What is a bargain if it does not bind anybody?

Mr. WALSH. There is nothing in the bill to prevent strikes. We cannot stop that. No legislation can. What this bill does is to seek to prevent strikes brought on as a result of the employer refusing to recognize and bargain collectively with the properly designated representatives of his employees.

Mr. HASTINGS. Let me read this to the Senator from Massachusetts and see how nearly we agree on it.

Section 9 (a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes.

And those units are fixed by the board, as I understand it, or are approved by the board; and, as I have said, a unit may be scattered all over the country and a majority of the employees control.

Shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining.

Mr. WALSH. The representatives chosen by the majority shall be the collective bargaining agency for the employees in the unit. As I have said, the making of the bargain does not prevent even the majority from striking. We cannot pass laws to compel a man to be a slave. Even after he makes an agreement he can say, "I do not want to work."

The trouble with the Senator is that he has the idea that a dissenting employee in the unit covered by the agreement would be forced in an employment the terms of which may have become distasteful to him. Not by any means. It only leads the employees to the door of the

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employer and states, "These are the representatives chosen by a majority of the workers and you should bargain with them." That is all it does.

Mr. HASTINGS. Let me read a little further and show what it provides:

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

Mr. WALSH rose.

Mr. HASTINGS. Just a moment. Let me point out what rights the minority have.

Provided, That any individual employee or group of employees shall have the right at any time to present grievances to their employer.

That is all the right the minority have. The majority have a right to make a bargain with respect to wages, hours of employment or other conditions of employment, but the minority have the right only as individuals or a group of employees at any time to present grievances to their employer.

Let me place before the Senate my own idea about it and let the Senator correct me if I am wrong.

Mr. WALSH. Will the Senator permit me to say one word?

Mr. HASTINGS. Certainly.

Mr. WALSH. All the section does is to designate the agency to negotiate on behalf of the employees, with whom the employer must deal. He does not have to accept any particular contract with them, but he must bargain with them in a bona fide effort to reach a mutually satisfactory agreement.

Mr. HASTINGS. Let me take the case of an automobile manufacturer having 2,000 employees, who have any kind of an organization they want. I do not care whether it is a labor union or what not, but we will suppose there is a unit in that particular corporation in a particular plant. They want someone to represent them, and 1,100 of them want a certain group or a certain person to represent them, to go to their employer and see if they can make an agreement. There is a vote on that question, the representatives are named, and they go and discuss with their employer what **[7673]** the trouble is with respect to this labor dispute, and they reach an agreement. They agree, let us suppose, for a year or for 6 months or for 2 years that these shall be the conditions of employment in this factory.

Certainly if there be anything in this bill that is worth while at all, that agreement must be binding upon the people who are represented on both sides, or it does not amount to anything.

What I ask the Senator—and what I want to call attention to—is, What is to become of the individual rights and the individual freedom of the 900 people who do not like the bargain that has been made? What happens to them? They either have to go along with the 1,100, or they have to be discharged by the employer, because in this bill there is a provision that the 1,100 can make their bargain with the employer.

"This agreement we make with you, we representing the employees and you the employer. The agreement we make with you is that

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every person employed in this factory shall belong to this union to which the 1,100 of us belong. Unless you make this bargain with us we are going to walk out. If you do make the bargain with us, 1,100 of us at least are going to stay."

That leaves the 900 in that factory with no place to go except out in the cold or agree to what has been proposed to them by the representatives of the 1,100. Is that true or not? That is what I should like to find out.

Mr. WALSH. The Senator made so many assertions in connection with his question that it is difficult to answer it. The trouble with the Senator is that he thinks this proposed legislation goes to the extent of compelling an agreement between an employer and the representatives of the employees.

Mr. HASTINGS. No; that is not correct.

Mr. WALSH. It does not do that.

Mr. HASTINGS. I agree to that.

Mr. WALSH. All the bill does is, for the sake of peace and harmony, for the sake of bringing employers and employees together, to lay the foundation of machinery for getting a proper representation of employees at the door of the employer to discuss and argue out their difficulties. That is all it does. An agreement arrived at with the representatives chosen by a majority has the best chance of achieving general acceptance, and thus stabilizing employment relations and promoting peace.

Mr. HASTINGS. Under the bill, who would represent the 900 employees?

Mr. WALSH. The wise employer will learn the sentiments of all groups among his employees; that is not denied. But the negotiation of the collective agreement must be with the majority representatives. No one can compel him to put his name and pen to any particular agreement of any shape or form under this bill any more than now. Now, the employees can say, "Unless you do this, we will strike," and they may strike. Under this bill they can do that. We do not enter that domain. The majority rule is best illustrated by the fact that the Senator is here representing a majority of the people of Delaware. He speaks for them. That does not mean that the minority cannot protest by their vote. That does not mean that the minority cannot criticize. That does not mean that the minority cannot see fit to attempt to make a change at the next election. All those rights these employees have. The minority need not continue in employment under the terms of the collective agreement.

Mr. HASTINGS. They either are bound or they may have to walk out.

Mr. WALSH. That is true now. Lay this bill aside now, and any number of employees may go to an employer and make demands, and if he does not meet them they can walk out.

Mr. HASTINGS. I thought the attempt was to cure the present situation.

Mr. WALSH. We are curing it. We are requiring employers to negotiate with the properly designated representatives of their employees, in the hope of having peace, in the hope of removing misunderstanding, not for the purpose of taking rights away from either party.

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Mr. President, there are some fundamental rights an employer has, just as there are rights an employee has. No one can compel an employer to keep his factory open. No one can compel an employer to pay any particular wage. No one can compel an employer to hire others in addition to those he sees fit to hire. So with an employee; no one can compel him to work, no one can compel him to go on strike, no one can compel him to leave his work.

No one can keep an employer from closing down his factory and putting thousands of men and women on the street. So in dealing with this bill we have to recognize those fundamental things, and we have not gone into that domain. All we do is to remove the barriers that have kept employees away from their employers, which have prevented collective bargaining, which have resulted in strikes without any attempt to negotiate. All we have done is to promote the orderly processes of collective bargaining.

Mr. WAGNER. The Senator is concerned with what happens to the minority. Under this proposed legislation, assuming an agreement has been consummated by the agency elected by the majority of the employees, there will be no advantage which a majority can have under an agreement to which the minority is not also entitled, and in order to have that advantage the minority need not join any organization. It can join or not join, either way. It cannot be discriminated against under any other provision of the law.

Mr. HASTINGS. Let me call the attention of the Senator from New York to this provision in section 8, paragraph (3), at the bottom of page 10:

It shall be an unfair labor practice for an employer—

That language begins section 10, and then I read subparagraph (3)—

by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization—

It is declared to be an unfair labor practice for an employer to do that.

Mr. WAGNER. Yes.

Mr. HASTINGS. Then the subparagraph continues:

Provided, That nothing in this act, or in the National Industrial Recovery Act as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a)—

Namely, a majority—

in the appropriate collective bargaining unit covered by such agreement when made.

That is the reverse, as I understand, of the "yellow dog" contract which has been so roundly and properly condemned in this body.

Mr. WAGNER. No, Mr. President; the Senator apparently does not understand that provision. It does no more than to legalize a closed-shop agreement, which is a matter of agreement between employer and employees where it is now sustained by the public opinion of the State.

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Mr. HASTINGS. This language is perfectly clear. Does it not say, in so many words, that if the employer so desires, and the majority of the labor union so desires, they may make an agreement whereby no one may be employed in the establishment unless he belongs to that union, and will not that provision in this bill compel a minority of employees in that particular shop or that particular unit to join that union, whether they wish to or not, and pay all the fees which the union may desire to charge?

Mr. WAGNER. The provision will not change the status quo. That is the law today; and wherever it is the law today that a closed-shop agreement can be made, it will continue to be the law. By this bill we do not change that situation. Closed-shop agreements are made all over the **[7674]** country, and they are matters of agreement. The question of compulsion is not involved in them. Closed-shop agreements are very well known in this country, and they are mere matters of agreement.

Mr. WALSH. Mr. President, in reply to the Senator's last question, I will say that I think we all agree with the definition of an unfair practice given under subparagraph (3), namely:

> It shall be an unfair labor practice for an employer—
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

That, standing alone, would make an employer commit an unfair labor practice if he required his employee to be a member of a union. The Senator understands that, of course. The reason why an exception has been made to the rule is that there are already contracts existing, permitted and authorized by certain States, permitting employers to make contracts with employees limiting their personnel to the members of a particular union.

That practice is quite common among the plasterers and the bricklayers and other masons. All this bill says is that no employer may discriminate in hiring a man, whether he belongs to a union or not, and without regard to what union he belongs; but if an employer wishes to agree and to make a contract of his own volition with his employees to hire only members of a company union or of a trade union, he can do so.

The provision in the bill makes it possible for an employer to say, "I will hire only company union men"; but the agreement must be voluntarily entered into and not forced upon him. Or he can say, "I will hire, as I do now and as the unions exist now, only members of trade unions."

In other words, if there were not this exception, what we should do by this bill would be merely to pass a law allowing closed shops. However, it is provided that the employer must give his consent. Even though nine-tenths of his men insist on their demands, the agreement must be voluntary, and it can be made only if he voluntarily given consent.

Mr. HASTINGS. What does the Senator mean by saying that the employer must give his consent? If 51 percent of his employees demand a certain thing, is he not obliged to consent or have a strike on his hands?

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Mr. WALSH. He certainly does not have to consent.

Mr. HASTINGS. What is he going to do about it after this bill is passed?

Mr. WALSH. What can he do now, if 51 percent of his employees come to him now and say, "We want this right, and if you do not give it to us, we will strike"? This bill does not change that situation. I have repeated that again and again. This bill leaves it up to the representatives of his workers, with the hope, if they have been honestly selected by secret ballot, that they will say, "We shall present our grievances and endeavor to settle some of these disputes." There will be a settlement of some, but not a settlement of all. At least, those men will be the legal representatives of the workers whom the National Labor Relations Board will recognize, and the employer will know that he is dealing with what appears to be, under the law of the land, a recognized majority representative of his own employees.

This bill will not stop all strikes, though it will prevent some strikes. It will, however, stop many, many misunderstandings. At least, it will invite and encourage representatives of employees to meet with their employers and try to settle their disputes. It will prevent being done some of the things which were done in the past. This bill, however, will not settle all strikes, nor is it expected that it will make a police court out of the board, as the Senator from Maryland apparently wishes it to do.

Do Senators realize what the Senator's amendment means? If his amendment were adopted, the board would be flooded with complaints from employees saying, "I was coerced by this other employee." "I was coerced by so-and-so." "I was coerced by such-and-such an employee." The whole purpose and object of this bill would be destroyed, namely, to have peaceful elections, honest elections, and representatives of employees duly appointed to come and talk over their grievances as man to man with their employers.

Instead of that, if the amendment were adopted, the board would be virtually a police court, and employees would be bringing complaints, such as, that John Jones said to Jim Smith's wife that he was going to lock him out if he did not join this or that union. The board would be nothing but a police court. We have avoided that. The police-court laws still remain. We have not repealed them. The injunctions of the courts still remain. We have not repealed the laws under which they are issued. All we have done is to provide for a better understanding between the employees and the employers, in the expectation and hope that mutual confidence, high regard for each other, and the fact that the employers will confer with the representatives of the majority of their employees will in many instances to a peaceful solution of their grievances and a settlement of their disputes. That is the hope of this proposed legislation.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Maryland.

Mr. HASTINGS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Frazier	Moore
Austin	George	Murphy
Bailey	Gerry	Murray
Bankhead	Gibson	Neely
Barbour	Glass	Norris
Barkley	Gore	Nye
Bilbo	Guffey	O'Mahoney
Black	Hale	Overton
Bone	Harrison	Schwellenbach
Borah	Hastings	Sheppard
Bulow	Hatch	Shipstead
Burke	Hayden	Steiwer
Byrd	Johnson	Thomas, Okla.
Byrnes	Keyes	Thomas, Utah
Capper	La Follette	Townsend
Caraway	Lewis	Trammell
Clark	Lonergan	Truman
Connally	McCarran	Tydings
Costigan	McGill	Vandenberg
Couzens	McKellar	Van Nuys
Davis	McNary	Wagner
Donahey	Maloney	Walsh
Duffy	Metcalf	White
Fletcher	Minton	

The PRESIDING OFFICER. Seventy-one Senators having answered to their names, a quorum is present. The question is on the amendment offered by the Senator from Maryland [Mr. Tydings].

Mr. TYDINGS. I ask for the yeas and nays.

The yeas and nays were not ordered.

Mr. TYDINGS. Mr. President, I ask for a verification of the count. To order a roll call requires only one-fifth of the membership present. I counted, as I believe, 11 Senators in favor of the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been demanded. Is the request seconded? [A pause.] There still is not a sufficient number.

Mr. TYDINGS. May I ask how many the Chair counted?

The PRESIDING OFFICER. Nine.

Mr. TYDINGS. How many Senators are on the floor?

The PRESIDING OFFICER. Seventy-one Senators answered to the roll call.

Mr. TYDINGS. I counted more than that. Probably I was mistaken.

Mr. HASTINGS. Mr. President——

The PRESIDING OFFICER. All those in favor of the amendmeut will say "aye." [A pause.] Those opposed will say "no." [A pause.] The "noes" have it.

Mr. VANDENBERG. Mr. President, the Senator from Delaware was trying to get recognition before the result of the vote was announced.

Mr. HASTINGS. Mr. President, I wish to say that so far as I am concerned I am inclined to try to get through with this bill and not to delay it. I have a speech on my desk which will take 2 or 3 hours, but which I was going to shorten considerably. However, if we are not even going to have the yeas and nays upon an important amendment

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such as this, there will be no particular hurry about getting the bill through the Senate. I think we are entitled to have the yeas and nays on this question.

[7675] Mr. BARKLEY. Mr. President, under the rule no Senator is entitled to the yeas and nays unless a sufficient number of Senators second his request.

Mr. HASTINGS. I know that as well as does the Senator from Kentucky.

Mr. TYDINGS. Mr. President, with no disrespect to the Presiding Officer or the Senate, I do not believe many Senators were apprized of the fact that I was asking for the yeas and nays. I ask unanimous consent that I may again ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. The Chair would like to state for his own protection that the rule of the Senate clearly provides for the manner in which the request for the yeas and nays shall be decided. There were not a sufficient number of hands raised, despite the fact that the Chair clearly stated the request of the Senator from Maryland.

Mr. TYDINGS. The Senate has not as yet voted on the passage of the measure, and I am entitled again to ask for the yeas and nays. Again I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. The Senator from Maryland asks unanimous consent that the yeas and nays be ordered on the pending amendment.

Mr. LA FOLLETTE. Mr. President, I should like to suggest that the Chair had already announced the result of the vote. I rise for the purpose of asking unanimous consent for a reconsideration of the vote by which the amendment was rejected, and to ask for a record vote.

The PRESIDING OFFICER. The Senator from Wisconsin asks unanimous consent for a reconsideration of the viva voce vote by which the amendment was rejected. Is there objection? The Chair hears none.

Mr. JOHNSON. Mr. President, I unite in the request for the yeas and nays. Although I differ with the Senator from Maryland with regard to the amendment, nevertheless I believe in granting him the right to have a record vote on the amendment. I am ready to go on record. I ask that the yeas and nays may be ordered. I should like to see whether or not there are enough Senators here to accord that courtesy to the Senator from Maryland.

The PRESIDING OFFICER. Is the request for the yeas and nays seconded? A sufficient number of Senators having seconded the request, the yeas and nays are ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LEWIS. I rise to announce the absence of the Senator from South Carolina [Mr. Smith], the Senator from Illinois [Mr. Dieterich], and the Senator from Georgia [Mr. Russell], who are unavoidably detained. The Senator from Illinois [Mr. Dieterich], if present, would vote "nay."

Mr. BARKLEY. The Senator from Arkansas [Mr. Robinson] is unavoidably detained on official business. He has been unable to

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obtain a pair on this vote, but I desire to announce that if present he would vote "nay."

Mr. MURRAY. The senior Senator from Montana [Mr. Wheeler] is unavoidably absent. If present, he would vote "nay."

Mr. DAVIS (after having voted in the negative). I have a general pair with the junior Senator from Kentucky [Mr. Logan], who I notice, is absent. Not knowing how he would vote, I withdraw my vote.

Mr. HAYDEN. My colleague the senior Senator from Arizona [Mr. Ashurst] is unavoidably detained on departmental business. If present, he would vote "nay."

Mr. BARKLEY. The junior Senator from Kentucky [Mr. Logan] is unavoidably detained on official business. I am not advised how he would vote if present, but I think he would vote "nay."

Mr. DAVIS. May I ask the Senator from Kentucky if that announcement would release my pair? Does his statement about how his colleague would vote release my pair?

Mr. BARKLEY. I am not stating how my colleague would vote if present. I did not state how he would vote. I was just expressing my opinion, and that does not change the status of the pair at all.

Mr. AUSTIN. I wish to announce the general pair of the Senator from Wyoming [Mr. Carey] with the Senator from Ohio [Mr. Bulkley.]

I also announce that the Senator from Iowa [Mr. Dickinson] has a pair on this question with the Senator from New Hampshire [Mr. Brown]. If present, the Senator from Iowa [Mr. Dickinson] would vote "yea", and the Senator from New Hampshire [Mr. Brown] would vote "nay."

I also announce that the Senator from South Dakota [Mr. Norbeck], the Senator from Minnesota [Mr. Schall], the Senator from Wyoming [Mr. Carey], and the Senator from Iowa [Mr. Dickinson] are necessarily absent.

Mr. LEWIS. I desire to announce that the following Senators are necessarily detained from the Senate:

The Senator from Tennessee [Mr. Bachman], the Senator from New Hampshire [Mr. Brown], the Senator from Ohio [Mr. Bulkley], the Senator from Louisiana [Mr. Long], the Senator from California [Mr. McAdoo], the Senator from Nevada [Mr. Pittman], and the Senator from Idaho [Mr. Pope].

I also desire to announce that the Senator from North Carolina [Mr. Reynolds] is absent on a mission of the Senate in the Virgin Islands.

I wish also to announce that the Senator from Utah [Mr. King] is detained on account of illness.

The result was announced—yeas 21, nays 50, as follows:

YEAS—21

Austin	Glass	Metcalf
Bailey	Gore	Radcliffe
Barbour	Hale	Steiwer
Burke	Hastings	Townsend
Byrd	Keyes	Tydings
Couzens	McKellar	Vandenberg
Gibson	McNary	White

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NAYS—50

Adams	Frazier	Murray
Bankhead	George	Neely
Barkley	Gerry	Norris
Bilbo	Guffey	Nye
Black	Harrison	O'Mahoney
Bone	Hatch	Overton
Borah	Hayden	Schwellenbach
Bulow	Johnson	Sheppard
Byrnes	La Follette	Shipstead
Capper	Lewis	Thomas, Okla.
Caraway	Lonergan	Thomas, Utah
Clark	McCarran	Trammell
Connally	McGill	Truman
Costigan	Maloney	Van Nuys
Donahey	Minton	Wagner
Duffy	Moore	Walsh
Fletcher	Murphy	

NOT VOTING—23

Ashurst	Dickinson	Pope
Bachman	Dieterich	Reynolds
Brown	King	Robinson
Bulkley	Logan	Russell
Carey	Long	Schall
Coolidge	McAdoo	Smith
Copeland	Norbeck	Wheeler
Davis	Pittman	

So Mr. Tydings' amendment was rejected.

Mr. HASTINGS. Mr. President, I should like to inquire of the Senator from New York with respect to paragraph (3) on page 4 and see if I clearly understand the paragraph. I desire to read it:

> The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute—

And so forth. Was it the intention to have that definition include a person who is out on strike?

Mr. WAGNER. It may. It is similar to provisions in the Norris Anti-Injunction Act and the Railway Labor Act passed last year.

Mr. HASTINGS. It does, in fact, as I understand, permit the original employee to maintain his position unless he has taken employment with some other person.

Mr. WAGNER. Of course; the decisions of the courts, so far as I know, have generally regarded workers as employees even though they may be on strike.

Mr. HASTINGS. Referring to section 7, which has been read to the Senate several times by the Senator from Maryland [Mr. Tydings], does the Senator from New York understand that that section would permit employees to do all these things during working hours?

[7676] Mr. WAGNER. From what section is the Senator reading?

Mr. HASTINGS. Page 10, section 7. It describes certain rights which the employees shall have, namely:

> The right to self-organization, to form, join, or assist labor organizations, to bargain collectively—

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And so forth. Does that language contemplate that that may be done during working hours, and that the employer can do nothing about it?

Mr. WAGNER. May what be done during working hours?

Mr. HASTINGS. The various things mentioned in section 7. It States that—

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining—

And so forth.

Mr. WAGNER. The Senator asks whether these things may be done during working hours?

Mr. HASTINGS. Yes.

Mr. WAGNER. Of course, if employees did that when they should be working, they would be subject to discharge.

Mr. HASTINGS. If they did that during working hours and in consequence were discharged, would not the employer be guilty of an unfair labor practice? I ask that because section 8, paragraph (1), says that—

> It shall be an unfair labor practice for an employer—
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

Mr. WAGNER. No sensible person would interpret that language to mean that while a factory is at work the workers could suddenly stop their duties to have a mass meeting in the plant on the question of organization.

Mr. HASTINGS. The Senator does not think the language is subject to that construction?

Mr. WARNER. Why, of course not.

Mr. HASTINGS. I desired to be certain that the Record would be clear upon that point.

Mr. WARNER. The Record may be clear upon that point.

Mr. HASTINGS. Now let me inquire about paragraph (4), on page 11 which says that it shall be an unfair labor practice for an employer—

> To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.

Suppose an employee should file a perfectly outrageous charge, one which was not true, and which he knew was not true: Under paragraph (4) is it the Senator's notion that the employer might, because of that, and even if that fact were shown, be found guilty of an unfair labor practice?

Mr. WAGNER. Merely because he has filed charges related to unfair labor practices no employee should be discriminated against. That is exactly what that section means; otherwise, even though there might be flagrant violations of the provisions of this measure, an employee would not be free to file charges. He would know that the moment the charges were filed he would be discharged.

Let me give the Senator——

Mr. HASTINGS. The Senator does not need to give any illustration.

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Mr. WAGNER. No; but I wish to carry the matter a little further for the Senator's information.

In certain plants which now have company-dominated unions, the employees were asked to sign petitions, to be sent to their representatives, opposing this bill. I received personal letters from workers in which they said they had signed these petitions because they knew if they did not do so their jobs would be lost, and that they needed their jobs in order that their families might eat. It is that sort of discrimination which we wish to prevent.

Mr. HASTINGS. The trouble here is the same trouble we frequently have. In trying to correct one evil, we create a new one. I agree with all that. I agree that the worker ought to have a right to make complaint about the violation of this proposed law, and that he ought not to be discriminated against for so doing; but I had in mind whether we could not put in the measure a provision that a person who did so in good faith should not be discriminated against, and not leave the provision as broad as it is, so that an employee might file charges maliciously, for instance, knowing that he could not lose his job even if he did so maliciously.

Mr. WAGNER. The suggestion of the Senator would bring up another question that would complicate the situation still more. I do not think the provision as it now stands will be subject to any abuse.

Mr. HASTINGS. The Senator from New York is in charge of the bill.

Mr. WAGNER. I am satisfied with the provision as it stands.

Mr. HASTINGS. In view of the vote upon the amendment offered by the Senator from Maryland [Mr. TYDINGS], which it seemed to me ought to have been agreed to, I shall not offer, any amendment to this provision. I simply call the Senator's attention to it.

Now may I inquire of the Senator from New York whether, in his judgment, this bill gets around—if I may use that expression—the many decisions of the Supreme Court which seem to me to hold definitely that the Congress cannot do this particular kind of thing?

Mr. WAGNER. The Senator from Delaware inquired as to whether the proposed act was intended to circumvent certain decisions of the courts?

Mr. HASTINGS. That is correct.

Mr. WAGNER. I do not know what particular cases the Senator has in mind, but I am sure he is acquainted with the case of Texas against Railway Clerks in which the United States Supreme Court upheld an injunction that had been issued against a railroad company for interfering with the representatives of the railway clerks' union, who had been elected, as the evidence before the Court showed, by a majority of the railway clerks. The railway company, in order to have a bargaining agency more convenient to itself, organized a company union. The injunction dissolved the company-dominated unions, upheld workers' right to organize, and recognized the majority rule. In short, this court decision upholds the philosophy of the pending legislation.

Mr. HASTINGS. Mr. President, I reached the conclusion more than 2 or 3 years ago that this place is not the proper place to argue any constitutional question.

Mr. NORRIS. The Senator does not reach that conclusion because he has not heard constitutional questions discussed; does he?

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Mr. HASTINGS. No. It is more or less of a joke around the Senate that anybody who talks about the Constitution or raises a constitutional question considers himself a constitutional lawyer. From my point of view, one does not have to be anything more than a law student to reach the conclusion that the proposed act is unconstitutional.

I went to the trouble to gather some extracts from the opinions of the Supreme Court and of other courts which I think are applicable to this particular subject. It would take me quite a little while to read them, and I doubt whether a reading of them would interest very many Members of the Senate. It occurred to me, however, that these quotations might be of some service at some other time if they were printed in the Record, and while it may be a little unusual, I was wondering whether I might get unanimous consent to have these extracts from these decisions placed in the Record at the end of my remarks. It would save a great deal of time.

Mr. BORAH. Mr. President, I do not wish to object to what the Senator is requesting, but I wish he would state the points to which the decisions run as to the unconstitutionality of the proposed legislation.

Mr. HASTINGS. I think I can state it briefly. Of course, the principle involved is the right of the individual to make his own bargain with his employer. That is the principal thing.

The Senator from Idaho will remember the case of Adair, as I recall the name, against a hospital in Washington, which involved the hours of labor for women, giving the authority to a board. One of the reasons why I should like **[7677]** to have these decisions in this particular place is that I think they go to other things which are to come before the Congress within the next 2 or 3 weeks, such as the social security bill. The theory is that it denies the freedom of contract between an individual and his employer. I am quite certain, from my study of the pending bill, that it does that as completely as any bill that has ever been proposed in the Congress.

Mr. WAGNER. Will the Senator yield to me long enough to read a short extract? It will take but a moment.

Mr. HASTINGS. If the Senator will permit me to have these decisions incorporated, I shall close my remarks and yield the floor.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Delaware?

There being no objection, the matters were ordered to be printed in the Record, as follows:

In *Adair* v. *United States* (208 U. S. 161, 52 Law Ed. 436) the Court held unconstitutional a provision of a Federal statute making it a criminal offense against the United States for an agent or officer of an interstate carrier, having full authority in the premises from his principal, to discharge an employee from the service of such carrier because of his memberhip in a labor organization.

Mr. Justice Harlan, speaking for the Court, said (p. 174):

"While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may require, *it is not within the functions of government—at least, in the absence of contract between the parties—to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another.* The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will

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accept such labor from the person offering to sell it. * * * In all such particulars the employer and the employee have equality of right, and *any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.* * * * [Italics ours.]

"As the relations and the conduct of the parties toward each other was not controlled by any contract other than a general employment on one side to accept the services of the employee and a general agreement on the other side to render services to the employer—no term being fixed for the continuance of the employment—*Congress could not, consistently with the fifth amendment, make it a crime against the United States to discharge the employee because of his being a member of a labor organization.* [Italics ours.]

* * * * * * *

"Looking alone at the words of the statute for the purpose of ascertaining its scope and effect, and of determining its validity, we hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part. If such a power exists in Congress, it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ, in the conduct of its interstate business, *only* members of labor organizations, or *only* those who are *not* members of such organizations—a power which could not be recognized as existing under the Constitution of the United States * * *."

Again, in *Coppage* v. *Kansas* (236 U. S. 1, 59 Law Ed. 441), which involved the constitutionality of a statute of Kansas declaring it a misdemeanor for an employer or any of his employees to coerce, require, demand, or influence any person or persons to enter into any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association, as a condition of such person or persons securing employment, or continuing in the employment of such individual, firm, or corporation, the Court, after elaborate discussion and review of the decided cases, held that the State statute was repugnant to the fourteenth amendment of the Federal Constitution.

Mr. Justice Pitney, speaking for the Court, said (p. 14):

"* * * Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. *Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property.* If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property save by working for money." [Italics ours.]

I do not contend that employers and employees do not have the right to enter into voluntary agreements with each other that the employees shall or shall not become members of a labor organization. But, as held by the Court in *Adair* v. *United States*, supra, the purchase of labor by the employer and the sale of labor by the employee are property rights guaranteed by the Constitution. Congress does not have the constitutional power to prohibit by legislation an employer from discharging an employee from service because of his membership in a labor organization, such holding being based upon the ground that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for officers or employees of an interstate carrier to discharge an employee from service because of such membership on his part.

To the same effect is *Adkins et al.* v. *Children's Hospital of the District of Columbia* (261 U. S. 525, 67 Law Ed. 785). That case involved the constitutionality of an act of Congress providing for the fixing of minimum wages for women and children in the District of Columbia. Any violation of the act by an employer or his agent constituted a misdemeanor, punishable by fine and imprisonment. One of the declared purposes of the act was "to protect the women and minors of the District from conditions detrimental to their health and morals, resulting from wages which are inadequate to maintain decent standards of living; and the act, in each of its provisions and in its entirety, shall be interpreted to effectuate these purposes." The act was held unconstitutional.

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Mr. Justice Sutherland, speaking for the Court, said (p. 545):

"The statute now under consideration is attacked upon the ground that it authorizes an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the fifth amendment. That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause is settled by the decisions of this court, and is no longer open to question (*Allgeyer* v. *Louisiana* (165 U. S. 578, 591, 41 L. ed. 832, 836, 17 Sup. Ct. Rep. 427); *New York L. Ins. Co.* v. *Dodge* (246 U. S. 357, 373, 374, 62 L. ed. 772, 781, 782, 38 Sup. Ct. Rep. 337, Ann. Cas. 1918C, 593); *Coppage* v. *Kansas* (236 U. S. 1, 10, 14, 59 L. ed. 441, 444, 446, L. R. A. 1915C, 960, 35 Sup. Ct. Rep. 40); *Adair* v. *United States* (208 U. S. 161, 52 L. ed. 436, 28 Sup. Ct. Rep. 277, 13 Ann. Cas. 764); *Lochner* v. *New York* (198 U. S. 45, 49 L. ed. 937, 25 Sup. Ct. Rep. 539, 3 Ann. Cas. 1133); *Butchers' Union S. H. & L. S. L. Co.* v. *Crescent City L. S. L. & S. H. Co.* (111 U. S. 746, 28 L. ed. 585, 4 Sup. Ct. Rep. 652); *Muller* v. *Oregon* (208 U. S. 412, 421, 52 L. ed. 551, 555, 28 Sup. Ct. Rep. 324, 13 Ann. Cas. 957)). Within this liberty are contracts of employment of labor. In making such contracts, generally speaking, the parties have an equal right to obtain from each other the best terms they can as the result of private bargaining."

Again in *Lochner* v. *New York* (198 U. S. 45, 49 Law Ed. 937), a New York State statute was held unconstitutional which restricted the employment of all persons in bakeries to 60 hours per week and 10 hours in any one day. Mr. Justice Peckham, speaking for the Court, said (p. 56):

"It must, of course, be conceded that there is a limit to the valid exercise of the police power by the State. There is no dispute concerning this general proposition. Otherwise the fourteenth amendment would have no efficacy and the legislatures of the States would have unbounded power; and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health, or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext—become another and delusive name for the supreme sovereignty of the State, to be exercised free from constitutional restraint."

And again (pp. 57, 58):

"It is a question of which of two powers or rights shall prevail—the power of the State to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates, though but in a remote degree, to the public health, does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor."

Coming, then, directly to the statute (p. 58), the Court said:

"We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health or the health of the individuals who are following the trade of a baker. If this statute be valid, and if, therefore, a proper case is made out in which to deny the right of an individual, sui juris, as employer or employee, to make contracts for the labor of the latter under the protection of the provisions of the Federal Constitution, there would seem to be no length to which legislation of this nature might not go."

And, after pointing out the unreasonable range to which the principle of the statute might be extended, the Court said (p. 60):

"It is also urged, pursuing the same line of argument, that it is to the interest of the State that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power. If this be a valid argument and a justificaton for this kind of legislation, it follows that the protection of the Federal Constitution from undue interference with liberty of person and freedom of contract is visionary wherever the law is sought to be justified as a valid exercise of the police power. Scarcely any law but might find shelter under such assumptions, and 'conduct,' properly so-called, as well as contract, would come under the restrictive sway of the legislature."

[7678] And further (p. 61):

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"Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual * * * whose rights are interfered with, unless there be some fair ground, reasonable in and of itself, to say that there is material danger to the public health or to the health of the employees if the hours of labor are not curtailed."

Charles Wolff Packing Company v. *Court of Industrial Relations of the State of Kansas* (262 U. S. 522, 67 Law Ed. 1103) involved the validity of the Court of Industrial Relations Act of Kansas. The act declared the following to be affected with a public interest: First, manufacture and preparation of food for human consumption; second, manufacture of clothing for human wear; third, production of any sustance in common use for fuel; fourth, transportation of the foregoing; fifth, public utilities and common carriers. The act vested an industrial court of three judges with power, upon its own initiative or on complaint, to summon the parties and hear any dispute over wages or other terms of employment in any such industry, and if it should find the peace and health of the public imperiled by such controversy it was required to make findings and fix the wages and other terms for the future conduct of the industry. The Supreme Court held that the act, insofar as it permitted the fixing of wages in the Wolff packing house, was in conflict with the fourteenth amendment and deprived it of its property and liberty of contract without due process of law.

Mr. Chief Justice Taft, speaking for the Court, said (p. 533):

"The necessary postulate of the Industrial Court Act is that the State, representing the people, is so much interested in their peace, health, and comfort that it may compel those engaged in the manufacture of food and clothing, and the production of fuel, whether owners or workers, to continue in their business and employment on terms fixed by an agency of the State, if they cannot agree. Under the construction adopted by the State supreme court, the act gives the industrial court authority to permit the owner or employer to go out of the business, if he shows that he can only continue on the terms fixed at such heavy loss that collapse will follow; but this privilege, under the circumstances, is generally illusory (*Block* v. *Hirsh* (256 U. S. 135, 157; 65 L. Ed. 865, 871; 16 A. L. R. 165; 41 Sup. Ct. Rep. 458)). A laborer dissatisfied with his wages is permitted to quit, but he may not agree with his fellows to quit or combine with others to induce them to quit.

"These qualifications do not change the essence of the act. It curtails the right of the employer, on the one hand, and of the employee, on the other, to contract about his affairs. This is part of the liberty of the individual protected by the guaranty of the due-process clause of the fourteenth amendment (*Meyer* v. *Nebraska*, decided June 4, 1923 (262 U. S. 390, ante, 1042; — A. L. R.—; 43 Sup. Ct. Rep. 625)). While there is no such thing as absolute freedom of contract, and it is subject to a variety of restraints, they must not be arbitrary or unreasonable. Freedom is the general rule, and restraint the exception. The legislative authority to abridge can be justified only by exceptional circumstances (*Adkins* v. *Children's Hospital*, decided April 9, 1923 (261 U. S. 525; ante, 785; 24 A. L. R. 1238; 43 Sup. Ct. Rep. 394))."

After the above decision and after receipt of the mandate of the Supreme Court the State court rendered certain judgements, whereupon the company again took the case to the Supreme Court (297 U. S. 552, 69 Law. Ed. 785). The court, speaking through Mr. Justice Van Devanter, on the second appeal, said (p. 569):

"The system of compulsory arbitration which the act establishes is intended to compel, and if sustained will compel, the owner and employees to continue the business on terms which are not of their making. It will constrain them not merely to respect the terms if they continue the business, but will constrain them to continue the business on those terms. True, the terms have some qualifications, but as shown in the prior decision, the qualifications are rather illusory and do not subtract much from the duty imposed. Such a system infringes the liberty of contract and rights of property guaranteed by the due process of law clause of the fourteenth amendment. 'The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect' (*Meyer* v. *Nebraska*, 262 U. S. 390, 399; 67 L. ed. 1042, 1045; 29 A. L. R. 1446; 43 Sup. Ct. Rep. 625)."

Hitchman Coal & Coke Co. v. *Mitchell et al.* (245 U. S. 229, 62 L. ed. 260) involved the matter of an injunction against interference by members of a labor

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organization with the plaintiff's relations with its employees. Mr. Justice Pitney, speaking for the Court, said (pp. 250–251):

"* * * Whatever may be the advantages of 'collective bargaining', it is not bargaining at all, in any just sense, unless it is voluntary on both sides. The same liberty which enables men to form unions, and through the union to enter into agreements with employers willing to agree, entitles other men to employ no man who owes any allegiance or obligation to the union. In the latter case, as in the former, the parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make. This Court repeatedly has held that the employer is as free to make nonmembership in a union a condition of employment as the workingman is free to join the union, and that this is a part of the constitutional rights of personal liberty and private property, not to be taken away even by legislation, unless through some proper exercise of the paramount police power (*Adair* v. *United States*, 208 U. S. 161, 174, 52 L. ed. 436, 442, 28 Sup. Ct. Rept. 277, 13 Ann. Cas. 764; *Coppage* v. *Kansas*, 236 U. S. 1, 14, 59 L. ed. 441, 446; L. R. A. 1915C, 1960, 35 Sup. Ct. Rept. 240) * * *."

Goldfield Consolidated Mines Co. v. *Goldfield Miners' Union, No. 220, et al.* (159 Fed. 500), involved the validity of a Nevada Statute which provided:

"SECTION 1. It shall be unlawful for any person, firm, or corporation to make or enter into any agreement, either oral or in writing, by the terms of which any employee of such person, firm, or corporation, or any person about to enter the employ of such person, firm, or corporation, as a condition for continuing or obtaining such employment, shall promise or agree not to become or continue a member of a labor organization, or shall promise or agree to become or continue a member of a labor organization.

"SEC. 2. Any person or persons, firm or firms, corporation or corporations, violating the provisions of section 1 of this act shall be deemed guilty of a misdemeanor," etc.

The Court said (p. 514):

"It is a constitutional right of an employer to refuse to have business relations with any person or with any labor organization, and it is immaterial what his reasons are, whether good or bad, well or ill founded, or entirely trivial and whimsical. Under the conditions existing in Goldfield at the time the resolutions were published, it is possible that the only practical method of exercising this right was to require all employees to refrain from being or becoming members of the Western Federation of Miners. Thus we have a right guaranteed by the Constitution, and its exercise blocked, or at least hindered and restricted, by the statute of Nevada. It is too clear to require a citation of authorities that the legislature has no power to restrict the exercise of a constitutional right, unless the interests of the public, as distinguished from the interests of the individual, or of a class of individuals, demand such restraint. The act so forbidden by the legislature must be detrimental to the public welfare, and the health, safety, or morals of the community to justify such intereference. There can be no pretense here, and none is made, that the execution of such a contract as the one in question has any tendency to injure the health, safety, or morals of the public, or of either employer or employees. It is clear that the Nevada statute deprives the employer of the right to contract as to certain matters which may be vital to him, and that it also, while not preventing, does obstruct the exercise of his right to exclude objectionable persons from his employ. The fact that the statute includes an element which is not found in any other similar statute to which attention has been called, in that it prohibits contracts requiring employees to join a union as a condition of employment, in nowise heals its invalidity; the added elements simply makes larger and wider the invasion of the liberty of the employer to fix the terms and conditions upon which he will contract for labor.

"The terms 'life, liberty, and property' as used in the Federal Constitution, embrace every right which the law protects. They include not only the right to hold and enjoy but also the means of holding, enjoying, acquiring, and disposing of property. The right to labor is property. It is one of the most valuable and fundamental of rights. The right to work is the right to earn one's subsistence, to live, and to support wife and family. The right of master and servant to enter into contracts, to agree upon the terms and conditions under which the one will employ and the other will labor, is property. The master has the right to fix the terms and conditions upon which he is willing to give employment; the servant has the right to fix the terms and conditions upon which he will labor, and any statute which curtails and limits that right deprives the party affected of his property; and, in the same measure, of his liberty. Both parties are free to enter into, or

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refuse to enter into, the contract. Before the law there is the same freedom to employ as to work, to buy as to sell, to choose one's employee as to choose one's employer."

Montgomery et al. v. *Pacific Electric Ry. Co.* (C. C. A. 9th Circuit) (293 Fed. 680) was a suit in equity by the railway company against Montgomery and others to make permanent a preliminary injunction restraining the defendants from interfering with the contractual relations existing between the railway company and its employees.

The contention was made that the contract in question was in violation of the Penal Code of California.

The provision of the penal code, which was quoted in the opinion, was held unconstitutional.

The Court said (p. 684):

"It is contended, however, that, conceding that there were contractual relations between the plaintiff and its employees, as stated in the complaint, the contract was in violation of law under section 679 of the Penal Code of California, which provides:

" 'Any person or corporation within this State, or agent or officer on behalf of such person or corporation, who shall hereafter coerce or compel any person or persons to enter into an agreement, either written or verbal, not to join or become a member of any labor organization, as a condition of such person or persons securing employment or continuing in the employment of any such person or corporation, shall be guilty of a misdemeanor.'

"In *Coppage* v. *State of Kansas* (236 U. S. 1, 26, 35 Sup. Ct. 240, 59 L. ed. 441, L. R. A. 1915C, 960), the Supreme Court of the United States held a similar statute in Kansas 'repugnant to the "due process" clause of the fourteenth amendment, and therefore void.' We are of the opinion that this decision is controlling in this case, and that the statute of the State is void."

Gillespie v. *People* (Supreme Court of Illinois) (58 N. E. 1007) involved the constitutionality of an Illinois statute which provided:

[7679] "That it shall be unlawful for any individual or member of any firm, or agent, officer, or employee of any company or corporation to prevent, or attempt to prevent, employees from forming, joining, and belonging to any lawful labor organization, and any such individual, member, agent, officer, or employee that coerces or attempts to coerce employees by discharging or threatening to discharge from their employ or the employ of any firm, company, or corporation because of their connection with such lawful labor organization, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding $100 or be imprisoned for not more than 6 months, or both, in the discretion of the court."

The statute was held unconstitutional. The Court said (p. 1009):

"* * * The terms 'life,' 'liberty,' and 'property' are representative terms and intended to cover every right to which a member of the body politic is entitled under the law. These terms include the right of self-defense, freedom of speech, religious and political freedom, exemption from arbitrary arrests, the right freely to buy and sell as others may. Indeed, they may embrace all our liberties, personal, civil, and political, including the rights to labor, to contract, to terminate contracts, and to acquire property. None of these liberties and rights can be taken away, except by due process of law (2 Story, Const. (5th ed.), sec. 1950). The rights of life, liberty, and property embrace whatever is necessary to secure and effectuate the enjoyment of those rights. The rights of liberty and of property include the right to acquire property by labor and by contract (*Ritchie* v. *People*, 155 Ill. 98, 40 N. E. 454, 29 L. R. A. 79). If an owner cannot be deprived of his property without due process of law, he cannot be deprived of any of the essential attributes which belong to the right of property without due process of law. Labor is property. The laborer has the same right to sell his labor, and to contract with reference thereto, as any other property owner. The right of property involves, as one of its essential attributes, the right not only to contract but also to terminate contracts. * * *."

People v. *Marcus* (Court of Appeals, New York) (77 N. E. 1073) involved the constitutionality of a New York statute. which provided:

"Any person or persons, employer or employers of labor, and any person or persons of any corporation or corporations on behalf of such corporation or corporations, who shall hereafter coerce or compel any person or persons, employee or employees, laborer or mechanic, to enter into an agreement, either written or verbal from such person, persons, employee, laborer, or mechanic, not to join or

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become a member of any labor organization, as a condition of such person or persons securing employment, or continuing in the employment of any such person or persons, employer or employers, corporation or corporations, shall be deemed guilty of a misdemeanor."

The statute was held unconstitutional. The Court said (p. 1074):

"* * * Contracts for labor may be freely made with individuals or a combination of individuals, and so long as they do not interfere with public safety, health, or morals they are not illegal. The views of this Court as to what constitutes freedom to contract in relation to the purchase and sale of labor and as to what contracts relating thereto are lawful and enforceable were stated with much detail and ability by the members of the Court when the cases of *National Protective Association* v. *Cumming* (170 N. Y. 315, 63 N. E. 369, 58 L. R. A. 135, 88 Am. S. Rep. 648) and *Jacobs* v. *Cohen* (183 N. Y. 207, 76 N. E. 5) were decided, and the decisions in those cases are substantially controlling in the determination of this appeal.

"In *National Protective Association* v. *Cummings, supra*, it was said that a person may refuse to work for another on any ground that he may regard as sufficient and the employer has no right to demand a reason for it, but even if the reason is that the employee refuses to work with another who is not a member of his organization, it does not affect his right to stop work or to refuse to enter upon an employment. The converse of this statement must be true, and an employer of labor may refuse to employ a person who is a member of any labor organization or he may make an employment conditional upon the person employed refraining from joining or becoming a member of a labor organization. It is a well-known fact that combinations of employees and also of employers require their members to do or refrain from doing many things which they deem to their individual and combined advantage while a person not a member of such an organization can act in accordance with the terms of such agreement as he may choose to make. A person employing labor may decide that it is to his advantage to employ only union labor, and be willing to enter into an agreement necessary to procure such labor or he may decide that it is to his advantage to employ nonunion labor, in which case he may also decide that it is to his advantage to make the employment conditional upon an agreement that such employee will not join or become a member of a labor organization.

In *Jacobs* v. *Cohen, supra*, an employees' union sued certain manufacturing employers on a promissory note given by them as collateral security to be applied as liquidated damages for the violation of a certain agreement by which the manufacturing employers agreed not to employ any help whatsoever other than members of said labor union who should procure a pass card showing that they were in good standing in said union, and by which they further agreed to conform to the rules and regulations of said union and cease to employ anyone not in good standing in said union, and by which they further agreed to many restrictive and other provisions relating to the conduct of their business, which are stated more fully in the prevailing and dissenting opinions in this court. The answer in the second separate defense alleged in substance that the contract was in restraint of trade, and that its purpose is to combine employers and employees whereby the freedom of the citizen in pursuing his lawful trade and calling is, through said contract, combination, and arrangement, hampered and restricted, and that it also for the purpose of coercing workmen to become members of a particular employees' organization under penalty of loss of position and deprivation of employment, and that it is against public policy and unlawful. Two questions were submitted to this court, viz: (1) Is a contract made by an employer of labor, by which he binds himself to employ and to retain in his employ only members in good standing of a single labor union, consonant with public policy and enforceable in the courts of justice in this State? (2) Is the "second" separate defense, contained in the answer herein of the defendants Morris Cohen and Louis Cohen, insufficient upon the face thereof to constitute a defense? Both of these questions were answered in the affirmative, and the court said: "Whatever else may be said of it, this is the case of an agreement voluntarily made by an employer with his workmen, which bound the latter to give their skilled services for a certain period of time, upon certain conditions, regulating the performance of the work to be done and restricting the class of workmen, who should be engaged upon it, to such persons as were in affiliation with an association organized by the employer's workmen with reference to the carrying on of the very work. It would seem as though an employer should be unquestionably free to enter into such a contract with his workmen for the conduct of the

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business without its being deemed obnoxious upon any ground of public policy. If it might operate to prevent some persons from being employed by the firm, or possibly, from remaining in the firm's employment, that is but an incidental feature. Its restrictions were not of an oppressive nature, operating generally in the community to prevent such craftsmen from obtaining employment and from earning their livelihood. It was but a private agreement between an employer and his employees concerning the conduct of the business for a year, and securing to the latter an absolute right to limit the class of their fellow workmen to those persons who should be in affiliation with an organization entered into with design of protecting their interests in carrying on the work."

"That freedom to contract which entitles an employer to make by agreement his place of business wholly within the control of a labor union entitles him, if he so desires, to require of his employees that they be wholly independent of any labor union."

Re Opinion of the Justices, Massachusetts Supreme Judicial Court (171 N. E. 234), involved the constitutionality of a bill introduced in the State legislature, as to the constitutionality of which the State supreme court was requested to render an opinion, which bill declared that provisions in contracts of employment whereby either party undertook not to join, become, or remain a member of a labor union or of any organization of employers, or undertook in such event to withdraw from the contract of employment, to be against public policy and void. The State supreme court held the bill would be unconstitutional if enacted into law.

The court based its decision principally on the decisions of the Supreme Court in *Adair* v. *United States, supra; Coppage* v. *Kansas, supra;* and *Adkins* v. *Children's Hospital, supra.*

The Court said (p. 235):

"The principles thus declared by the Supreme Court of the United States prevail in this Commonwealth. The provisions of articles 1, 10, and 12 of the declaration of rights of the constitution of this Commonwealth are as strong in protection of individual rights and freedom as those of the fifth and fourteenth amendments to the Constitution of the United States. It was said in *Commonwealth* v. *Perty* (155 Mass. 117, 121, 28 N. E. 1126, 1127, 14 L. R. A. 325, 31 Am. St. Rep. 533): 'The right to acquire, possess, and protect property includes the right to make reasonable contracts, which shall be under the protection of the law.' To the same general effect are *Opinion of the Justices* (208 Mass. 619, 94 N. E. 1044, 34 L. R. A. (N. S.) 771); *Rice, Barton & Fales Machine & Iron Foundry Co.* v. *Willard* (242 Mass. 566, 572, 136 N. E. 629); *Moore Drop Forging Co.* v. *McCarthy* (243 Mass. 554, 137 N. E. 919); and *A. T. Stearns Lumber Co.* v. *Howlett* (260 Mass. 45, 60, 61, 157 N. E. 82, 52 A. L. R. 1125). The Adair and Coppage cases have been recognized and followed in *Opinion of the Justices* (220 Mass. 627, 630, 108 N. E. 807, L. R. A. 1917B, 1119); *Bogni* v. *Perotti* (224 Mass. 152, 155, 112 N. E. 853, L. R. A. 1916F, 831); and *Opinion of the Justices* (Mass.) (166 N. E. 401, 63 A. L. R. 838). The views expressed in these several opinions and decisions, which need not be further amplified, are decisive of the question here propounded. There is a wide field for the valid regulation of freedom of contract in the exercise of the police power in the interests of the public health, the public safety, or the public morals, and, in a certain restricted sense, of the public welfare. * * *"

State, etc., v. *Daniels* (Supreme Court of Minnesota) (136 N. E. 584) involved the constitutionality of a Minnesota statute which made it an offense for an employer to require or influence any person to agree not to join or remain in a labor union as a condition of obtaining or retaining employment.

The court held the State statute unconstitutional under the decision of the Supreme Court in *Adair* v. *United States, supra.*

[7680] The court said (p. 586):

"* * * It therefore necessarily follows that, when the Supreme Court of the United States held the provision of the act of Congress in the particular upon which the first count of the indictment in the Adair case is based to be void as an encroachment upon the personal rights guaranteed by the language quoted from the fifth amendment, a similar provision in an act of the legislature of a State must likewise be held to be an invasion of the same rights and prohibited in the very same terms by section 1 of the fourteenth amendment, limiting the powers of the States.

"Insofar as the Federal Supreme Court has declared an enactment of a legislative body to be in contravention of the Constitution of the United States, this Court is

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n duty bound to follow and declare an act of like character, scope, and effect invalid. Section 5097 (R. L. 1905) in this particular, under which the prosecution against relator is attempted, is so essentially like that part of the act of Congress under which the indictment of Adair was drawn in its scope, purpose, and result that it may not be distinguished therefrom * * *."

Bemis v. *State* (C. C. A. Oklahoma) 152 Pac. 456) involved the constitutionality of an Oklahoma statute which provided:

"Any person or corporation within the State, or agent, or officer on behalf of such person or corporation who shall hereafter cause or compel any person to enter into and agreement either written or verbal not to join or be a member of any labor organization as a condition of such person securing employment or continuing in the employment of any such person or corporation, shall be guilty of a misdemeanor, and upon conviction shall be fined a sum not less than $200 nor more than $1,000, or imprisonmentin the county jail not less than 90 days nor more than 12 months, or both such fine and imprisonment."

The court held the statute unconstitutional, citing in support of its decision *Adair* v. *United States*, supra, and *Coppage* v. *Kansas*, supra.

State, etc., v. *Kreutzberg* (Supreme Court, Wisconsin) (90 N. W. 1098) involved the constitutionality of a Wisconsin statute providing that no person or corporation shall discharge an employee because he is a member of any labor organization. The statute was held invalid as imposing a restraint on individual freedom guaranteed by the State and Federal Constitutions. The court said (p. 1102):

"Free will in making private contracts, and even in greater degree in refusing to make them, is one of the most important and sacred of the individual rights intended to be protected. That the present act curtails it directly, seriously, and prejudicially cannot be doubted. The success in life of the employer depends on the efficiency, fidelity, and loyalty of his employees. Without emlarging upon or debating the relative advantages or disadvantages of the labor union, either to its members or to the community at large, it is axiomatic that an employer cannot have undivided fidelity, loyalty, and devotion to his interests from an employee who has given to an association right to control his conduct. He may by its decision be required to limit the amount of his daily product. He may be restrained from teaching his art to others. He may be forbidden to work in association with other men whose service the employer desires. He may not be at liberty to work with such machines or upon such materials or products as the employer deems essential to his success. In all these respects he may be disabled from the full degree of usefulness attributable to the same abilities in another who had not yielded up to an association any right to restrain his freedom of will and exertion in his employer's behalf according to the latter's wishes. Such considerations an employer has a right to deem valid reasons for preferring not to jeopardize his success by employing members of organizations. A man who has by agreeement or otherwise shackled any of his faculties—even his freedom of will—may well be considered less useful or less desirable by some employers than if free and untrammeled. Whether the workman can find in his membership in such organizations advantages and compensations to offset his lessened desirability in the industrial market is a question each must decide for himself. His right to freedom in so doing is of the same grade and sacredness as that of the employer to consent or refuse to employ him according to the decision he makes. We must not forget that our Government is founded on the idea of equality of all individuals before the law. Such restraints as may be placed on one may be placed on another. If the liberty of the employer to contract or refuse to contract may be denied, so may that of the employee * * *."

Mr. McKELLAR. Mr. President, section 7 of the bill reads as follows:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

The Senator from Maryland [Mr. Tydings] offered an amendment to add the words "without intimidation or coercion from any source." It seemed to me that that was a perfectly proper and appropriate

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amendment. I voted for the amendment believing that it would be to the best interest of the employees.

I am not sure that there is to be a yea-and-nay vote on the bill, and I want to say that I am thoroughly in favor of it, and expect to vote for it, believing it will do great good in aiding in the settling of disputes between employers and employees.

The PRESIDING OFFICER. Are there further amendments to be offered? If not, the question is, Shall the bill be engrossed and read a third time?

The bill was ordered to be engrossed for a third reading and to be read the third time.

The bill was read the third time.

Mr. LA FOLLETTE. Mr. President, in connection with the bill before the Senate, I ask to have printed in the Record at this point, as a part of my remarks, a statement by Rt. Rev. Monsignor John A. Ryan, director of the social action department of the National Catholic Welfare Conference; a statement by the Reverend James Myers, industrial secretary of the Federal Council of Churches of Christ in America; and a statement by Rabbi Sidney E. Goldstein, chairman of the social justice commission of the Central Conference of American Rabbis.

The PRESIDING OFFICER. Without objection, it is so ordered.

The statements referred to are as follows:

STATEMENT BY RT. REV. MSGR. JOHN A. RYAN, DIRECTOR, SOCIAL ACTION DEPARTMENT, NATIONAL CATHOLIC WELFARE CONFERENCE

With practical unanimity, the economic historians and the economists have for many years held that labor organization is necessary for the protection of the workers. The argument is very simple: The individual wage earner does not possess equal bargaining power with the individual employer; in order to obtain a reasonable measure of such equality, he must combine with his fellows and act as one moral person in the bargaining process.

To bring about this condition is the main object of the Wagner bill. Hence, sections 7 to 9 seem to be the most important of the entire bill. Section 7 describes the right of organization in general terms. Sections 8 and 9 would make this right effective. No reasonable objection can be raised to the provisions of section 8 which forbid the employer to interfere with free organization by his employees, to dominate, interfere with, or contribute financially to any labor organization. Unless these provisions are enforced by law, the bargaining power of the employees is seriously and fatally diminished.

The provision for majority rule is likewise essential to effective bargaining and equality of bargaining power. While the device of proportional representation of different groups of workers in an establishment for purposes of collective bargaining has a certain appearance of fairness, it is entirely impracticable at the present time in the United States. The representatives of the regular labor unions will not sit down on the same side of the bargaining table with the representatives of a company union or with the representatives of a Communist union. This may be deplorable, but it is a fact that cannot be changed by any amount of preaching or legislation in the near future. Therefore, the only practical solution is to let the representatives who have been elected by the majority of the employees in any plant or industry carry on the bargaining process for the whole group. After all, this exemplifies the principle of majority rule which obtains throughout all the political processes of election and legislation.

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STATEMENT BY THE REVEREND JAMES MYERS, INDUSTRIAL SECRETARY, FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA

While the Federal Council of the Churches of Christ in America has taken no action on the bill as such, I desire to call your attention to recent important declarations of the council on labor relations which bear upon the basic principles involved.

In January 1935, the executive committee of the Federal Council of the Churches of Christ in America adopted the following resolution:

"Whereas the Federal Council of the Churches of Christ in America has from its beginning contended for the right of labor as well as of employers to organize and deal collectively through representatives of their own choosing as the most hopeful method of assuring orderly, just, and cooperative industrial relations; be it

"*Resolved*, That the executive committee of the Federal Council of the Churches of Christ in America, while recognizing that all parties involved—labor, employers, and the general public—have rights and liberties which must be conserved, favors the strengthening of the authority and effectiveness of impartial national and regional labor boards."

In June 1934, the executive committee passed the following declarations: "Serious conflict has arisen over the refusal of strong employing groups to recognize trade unions and their determination to limit negotiations with labor to dealings with their own employees. The reasons for labor's insistence upon a broad basis of organization and upon representation of the workers by persons chosen and paid by themselves are too plain for argument. They are precisely the same reasons that impel employers to organize and to secure the ablest representatives of their own interests, chosen and paid by themselves."

The Federal Council of the Churches of Christ in America, which is a federation of 23 national Protestant denominations, has for the 26 years of its existence stood for the right of labor [7681] as well as employers to organize. The official document, known as the "Social Ideals of the Churches", enumerates many social ideals for which the churches should stand, including article no. 8, which reads: "The right of employees and employers alike to organize for collective bargaining and social action; protection of both in the exercise of this right; the obligation of both to work for the public good."

The executive committee of the Federal Council has also declared it to be a moral obligation of organized labor to admit to its membership "competent workers without distinction of nationality or race." I would recommend that the bill be amended so as to safeguard this principle.

The majority-rule provisions of the bill are, in my judgment, in line with our democratic traditions, and comparable for the workers to the provision in codes for employers which constitutes an employer's association with a substantial majority of employers of an industry as the spokesman for the entire industry.

In my opinion, the passage of the national labor relations bill is essential to peaceful progress in labor relations in this country. From my wide observation of labor conditions in various parts of the country it is my solemn judgment that there is real danger of prolonged bitter labor controversy which will greatly disturb the general welfare of the Nation unless this legislation is adopted to safeguard the inherent rights of the parties to industry. This, as I see it, is the duty of the Government.

STATEMENT BY RABBI SIDNEY E. GOLDSTEIN, CHAIRMAN SOCIAL JUSTICE COMMISSION, CENTRAL CONFERENCE OF AMERICAN RABBIS

We heartily endorse and support the Wagner bill for two reasons: In the first place, it establishes as the law of the land the right of the workers to organize and bargain collectively through representatives of their own choosing; in the second place, it outlaws unfair practices on the part of employers in their relation to the working classes.

The history of labor in America and in other countries proves that the workers can advance their own welfare only to the degree that they acquire power to bargain collectively through organization of forces. Wages are increased, hours are shortened, and working conditions improved not by the employer but through the demand labor is able to make by virtue of its strength.

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In this economic crisis it is more necessary than ever to protect and preserve the rights of labor to organize and to direct its own destiny. It is only through a decrease in hours and an increase in income that the workers can assure themselves even a reasonable amount of employment and a decent standard of living. With 12,000,000 men and women still out of work, full-time labor must insist upon a reduction in the weekly hours of work. With the annual income of the great mass of the working classes far below a normal level it is impossible to escape from this morass of misery. There can be no recovery from economic collapse until the working classes recover their purchasing power. The chief hope lies not in the employers' groups and their codes but in the National Labor Board that this bill is designed to establish that in turn will protect the workers and promote their welfare.

CONGRESSIONAL RECORD, SENATE—MAY 16, 1935

(79 Cong. Rec. 7681)

The PRESIDING OFFICER. The question is, shall the bill pass?

Mr. LA FOLLETTE. I ask for the yeas and nays on the final passage of the bill.

The yeas and nays were ordered, and the Chief Clerk called the roll.

Mr. DAVIS. I have a general pair on this question with the junior Senator from Kentucky [Mr. Logan], who is unavoidably detained. I understand that if he were present he would vote as I am about to vote. Therefore I feel free to vote. I vote "yea."

Mr. BULKLEY. I have a pair with the senior Senator from Wyoming [Mr. Carey], who is necessarily absent from the Senate. If present, he would vote as I intend to vote. I therefore feel free to vote and shall vote. I vote "yea."

Mr. HAYDEN. My colleague the senior Senator from Arizona [Mr. Ashurst] is necessarily detained from the Senate on official business. If present, he would vote "yea."

Mr. MCKELLAR. My colleague [Mr. Bachman] is unavoidably detained from the Senate. He has a pair with the Senator from Iowa [Mr. Dickinson]. If my colleague were present he would vote "yea," and I am informed that if the Senator from Iowa [Mr. Dickinson] were present he would vote "nay."

Mr. BYRD. My colleague, the senior Senator from Virginia [Mr. Glass] is unavoidably absent. He has a special pair on this question with the Senator from New Hampshire [Mr. Brown]. If present, the Senator from New Hampshire would vote "yea," and my colleague would vote "nay."

Mr. ROBINSON. I desire to announce that the Senator from New Hampshire [Mr. Brown], the Senator from Massachusetts [Mr. Coolidge], the junior Senator from Illinois [Mr. Dieterich], the Senator from Oklahoma [Mr. Gore], the senior Senator from Illinois [Mr. Lewis], the Senator from Nevada [Mr. Pittman], the Senator from Idaho [Mr. Pope], the Senator from Georgia [Mr. Russsell], and the Senator from South Carolina [Mr. Smith] are necessarily detained from the Senate.

I regret to announce that the Senator from Utah [Mr. King] is detained from the Senate on account of illness.

The Senator from North Carolina [Mr. Reynolds] is necessarily detained from the Senate on official business in the Virgin Islands.

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Mr. AUSTIN. I wish to announce a general pair between the Senator from Minnesota [Mr. Schall] and the Senator from Oklahoma [Mr. Gore]. I am not informed how either Senator would vote on this question if they were present and voting.

I also announce that the Senator from South Dakota [Mr. Norbeck] is necessarily absent.

The result was announced—yeas 63, nays 12, as follows:

YEAS—63

Adams	Fletcher	Murray
Bankhead	Frazier	Neely
Barbour	George	Norris
Barkley	Gerry	Nye
Bilbo	Guffey	O'Mahoney
Black	Harrison	Overton
Bone	Hatch	Radcliffe
Borah	Hayden	Robinson
Bulkley	Johnson	Schwellenbach
Bulow	La Follette	Sheppard
Byrnes	Lonergan	Shipstead
Capper	Long	Steiwer
Caraway	McAdoo	Thomas, Okla.
Clark	McCarran	Thomas, Utah
Connally	McGill	Trammell
Copeland	McKellar	Truman
Costigan	McNary	Van Nuys
Couzens	Maloney	Wagner
Davis	Minton	Walsh
Donahey	Moore	Wheeler
Duffy	Murphy	White

NAYS—12

Austin	Gibson	Metcalf
Bailey	Hale	Towsend
Burke	Hastings	Tydings
Byrd	Keyes	Vandenberg

NOT VOTING—19

Ashurst	Glass	Pope
Bachman	Gore	Reynolds
Brown	King	Russell
Carey	Lewis	Schall
Coolidge	Logan	Smith
Dickinson	Norbeck	
Dieterich	Pittman	

So the bill was passed.

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74TH CONGRESS
1ST SESSION

S. 1958

AN ACT

To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND DECLARATION OF POLICY

SECTION 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of ownership and out of numerous other modern industrial conditions, impairs and affects commerce by creating variations and instability in wage rates and working conditions within and

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between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity between production and consumption, reducing the amount of commerce, and tending to produce and aggravate recurrent business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial unrest which burden and affect commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

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DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more indi-

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viduals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

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(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

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(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employ-

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ment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be

appointed for terms of five years each, except that any individual chosen to fill a vancancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation

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of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as

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amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

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SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regula-

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tions as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712),

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as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

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REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual em-

ployee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part

the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to

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be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place

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and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice,

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then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia),

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within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and

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shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judg-

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ment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been

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engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such tem-

porary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or in-

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vestigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdic-

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tion to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting

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forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same

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shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provisions of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Passed the Senate May 13 (calendar day, May 16), 1935.

Attest:

Secretary.

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CONGRESSIONAL RECORD, HOUSE—JANUARY 31, 1935

(79 Cong. Rec. 1334)

ADDRESS BEFORE STATE CONVENTION, AMERICAN FEDERATION OF LABOR

Mr. MAVERICK. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

Mr. MAVERICK. Mr. Speaker, last May, in the year 1934—which is about 9 months ago—I made a talk to a State convention of the American Federation of Labor. I was the general counsel for the State Building Trades Council, and I should like to have printed in the RECORD my remarks at that time.

I said on that occasion that the N. R. A. can be an instrument for good or an instrument for evil; and if labor is to get anywhere they must be aggressively and efficiently organized. It begins to appear that—from what has happened in the automobile industry and in many others—labor is losing ground. I do not at this time say whose fault it is. The great industrial corporations are certainly well organized; they have good attorneys and they seem to be staying on top and getting stronger. I said in my talk last May that if the N. R. A. did not protect the rights of labor that it would be the greatest instrument of oppression ever brought to a people.

Undoubtedly, the N. R. A. must be continued—that is, we must have regulation of industry and protection for the rights of labor and of the consumers, but it looks bad for labor right now. and it may be necessary for the working people to demand new leadership in certain places if they are to be successful. The big industrial corporations are not going to do it; the people must do it themselves.

The record of the Texas State Federation of Labor shows the following:

Maury Maverick, of San Antonio, general counsel for the State Building Trades Council, at this time addressed the convention:

"Mr. President, delegates, ladies, and gentlemen, I want everybody to feel we are one happy family. I do not know anything about the politics of labor organizations. Just remember, we are one happy family.

"Most of the speakers who have come before you have been members of labor organizations or their fathers had cards. These speakers all claim some reason for being closely identified with you. All I claim is that I really lived on a farm, have pitched hay, chopped cotton, and fed and milked the cows. But there was no cotton chopper, hay pitcher, or cow milker union, so I never had a card.

"Five or six years ago I became deeply interested in questions vitally affecting those who work. My people have owned land, but most of that land has been taken away from us. Looking at it from a practical and selfish viewpoint, I may have to go to work and get a card, and therefore I want to be friendly with you.

"I have a daughter and a son who are very young, and I am speaking sincerely, for I know they are going to have to go to work; and it will be hard to get work because of all this accumulation of capital in the hands of a few and the improper distribution of wealth. It will be necessary for them when they are older to go to work, but I do not want them to have to become chain-store clerks with numbers to identify them rather than retain their identity and standing in the community through the use of their own names. The opportunity to exercise their own initia-

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tive and ambition in some calling or trade that will be honorable and remunerative is my hope for them. I am opposed to all this concentration of wealth and this vast drain upon our resources by the chains, which never pioneer, but come take way from you and me the cream of the earnings.

"As I say, I am an outsider, and there are a lot of things to consider that you may better approach your problems effectively and bring them before the public.

"There are the big dailies. Look in the Dallas papers this morning and you will see one complete section devoted to the bankers. About a column and a half is devoted to this convention. I am not making an attack on the press. Undoubtedly its workers are fine gentlemen, dedicating their columns to patriotic purposes—and profits—but we know they devote a great deal of space to the bankers and little to the workers. [Turning to reporters of the dailies at the press table.] I would advise you boys to join the Newspaper Guild and, as soon as you can, affiliate with the American Federation of Labor. It will increase your social standing when you can associate with printers. [Laughter and applause.]

"I am going to take up five points, all based on fundamental principles, which must endure if we are to prosper and maintain our national integrity and standing. The first is the right of organized labor to strike. The second is the freedom of the press, or the Bill of Rights of the Constitution of the United States. The third is proper labor legislation to protect the working masses. The fourth is complete elimination of company unions and other subterfuges, and fifth is elimination of child labor.

"As to the right of labor to strike, I know strikes are economic waste to capital and to the worker, but if you want to be successful you have to be militant and aggressive or you will not get anywhere at all. Labor is entitled to a fair wage in whatever field it may find itself, and labor is entitled to decent work hours and safeguards for the workers. If these things are denied you, then you have the right to demand that which is just. If this is denied you, then you have the right to strike against unfair wages, long hours, and intolerable conditions.

"When we talk about the freedom of the press, we refer to everyone. When the newspapers came out and said the N. R. A. was trying to take away the liberty of the press, an idiotic editorial came out in the papers, but the liberty of the press has never been touched. The newspapers go on publishing what they choose. I should like to suggest that the American Federation of Labor have a paper to go into the hands of every American. Let the labor papers of the State continue their good work, but have one publication to reach from five to ten million people, to go into the homes of organized labor and into channels where you can carry on a mighty campaign of education, that you may have a sympathetic people, who will know what you are fighting for—the real facts upon which you base your claims. Fully substantiate your arguments, that the people as a whole will be enlisted for a square deal for the men and women who work.

"You know about the National Labor Board. When I went to Washington recently, I promoted the bringing of a regional labor board to Texas. The Labor Board, as you know, has its headquarters in Washington, with 18 regional labor units. They have the right to hear complaints, but they cannot enforce the things which should be given prompt attention and a fair and equitable adjustment.

"For instance, in one town there was a compliance board on which there was not a member of organized labor. I assisted in getting a member of organized labor on that board, but now the other members will not meet with him because he is a worker. Certainly that is a great injustice, an intolerable situation with which labor ought not to be confronted. The various boards should be so organized that they have the right to enforce a fair deal and to protect the worker in all his rights and privileges.

[1335] "The Wagner labor board bill is of the utmost importance. You ought to get behind that measure with all your force. When you go before a labor board and find an instance of 15,000 workers being employed at a wage of 4 cents an hour, where they are able to make only $1.80 a week, and it is argued workers can live on 5 cents a day, that they are now getting too damned much, I say to you there is dire need for drastic action.

"I want to know who is going to be benefited when purchasing power is from 5 to 10 cents per capita. Evidently there is little regard for human rights. Intolerable greed should not be permitted. The American Federation of Labor. must promote the purchasing power of all the people; and working unselfishly for all the people along great humanitarian lines, it will succeed.

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"I recently read some statistics which revealed there are 3,000,000 members of company unions and 3,000,000 members of the American Federation of Labor. There are too many members of the company unions and not enough members of the American Federation of Labor. In speaking of some of the welfare work being done under company-union regime, we find this kind of 'pap' being handed out: Mrs. John D. Rockefeller, Jr., personally handed out presents to the children of the members of the company union at a holiday party. Now, wasn't that a liberal and gracious act?

"The only way to abolish company unions is by hard work. You must be on the job constantly. You must show the workers the benefit of a real organization, which stands for the rights of humanity, for justice, and the American standards of living. There are not enough labor organizers in the State of Texas. You should have a large force of union organizers. Your Government and the President of the United States have told you to organize, to band together for your common good, and you should heed that call.

"As to child labor, there is hardly any use emphasizing that subject. No sane, right-thinking man or woman is in favor of child labor. The reason there must be a constitutional amendment is that the N. R. A. is only temporary; it is subject to change. Such a protective measure written into the Constitution must be on the books, so that children will not have to slave and will have the opportunity to grow into manhood and womanhood unfettered and unharmed through drudgery and slavery in their adolescence.

"In your organization work you should by all means pick out men of courage, enthusiasm, and energy; men who will go all the way down the line for you, unafraid. Your cause is a righteous one and may be upheld in any group or circumstance. You must devote all possible time to a study of the issues that present themselves and affect your crafts and industrial unionism. These matters should be fully discussed and your members as a whole should understand fully your position. I suggest that you let no opportunity pass to take a part in all political issues.

"The general rule is that when some fellow gets up and makes a good speech—an oration, as it were—taking you to the very clouds, you say: 'Why, he is a nice fellow, a fine talker; I am going to vote for him.'

"My advice to you, frankly and candidly, is to make a careful study of that man's record. Find out what he has ever done to deserve your vote and support. Ask yourself, Is he sincere? If he isn't, what good is all his talk?

"I am talking about political science now in the sense that we have intelligent application of the economic principles of government in order that we will not have to struggle continually with such things as the C. W. A. and this and that to take care of the idle; that we can take men from the bread lines, distribute capital more evenly, and prevent vast accumulations in the hands of few men, who become virtual dictators.

"Study these things out along sane, sensible lines, my friends. Let there be proper adjustment through economic measures, which will mean work for the millions at living wages, with decent hours of employment, that the masses may have time for recreation and the better things of life along with those who toil not. Train yourselves to be a part and parcel of the great American citizenship, to which the Nation may ever look for substantial growth and proper protection at all times. Be citizens, proud of your Nation because of the splendid part you have played in bringing it to the highest level in its history.

"I think organized labor should always take a definite stand against any sort of taxation that bears unjustly on the people, or certain class of people, such as the sales tax, which has been discussed very ably by a previous speaker. I will not dwell much further on that subject.

"Some bright fellow gets up and says, 'Now, the way to get this Nation back to prosperity is to have a sales tax on everything, and that will do away with income taxes and generally relieve the situation.' He never thinks of the fact that the sales tax would be an inverted income tax, bearing heavily on those who cannot pay it.

"The American Federation of Labor is undoubtedly forming its program to carry out the great economic principles which will insure this Nation stability and more lasting prosperity; principles that will be ever-enduring and carry us on, a free people with the right to live and let live, bowing to no despot, but mindful of the liberties of others; a happy people, conscious that justice has prevailed, prosperity is real, and the masses may enjoy that which is their rightful

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heritage. You, my friends, are the people who can bring this about. [Loud applause.]

"The N. R. A. can be an instrument for good or an instrument for evil. We know that the N. R. A., unless it is to protect the rights of labor, will be the greatest instrument of oppression ever brought to a people.

"The only way to protect yourselves is to demand representation of labor on your compliance boards and the passage of the Wagner bill. For the present you must be militant, aggressive, and determined. You must stand up for your rights day in and day out. Then may we look for the coming of those happy days for which we now hope.

"I am grateful for this opportunity to appear before this splendid body of determined men and women and I wish you Godspeed in your work. I thank you." [Loud applause.]

A rising vote of thanks was tendered Mr. Maverick at the conclusion of his address.

CONGRESSIONAL RECORD, HOUSE—FEBRUARY 20, 1935

(79 Cong. Rec. 2332)

Mr. BOLAND. Mr. Chairman, many editorials are being written relative to the extension of the N. R. A. and numerous inquiries are being made regarding section 7 (a) of this act which deals entirely with labor. I represent a district that is practically 100-percent unionized in all industries and believe that Members of Congress should have an interpretation of this important section.

A part of the President's message, which he sent to Congress today, reads as follows:

> In our progress under the act the age-long curse of child labor has been lifted, the sweatshop outlawed, millions of wage earners have been released from the starvation wages and excessive hours of labor. Under it a great advance has been made in the opportunities and assurances of collective bargaining between employers and employees. Under it the pattern of a new order of industrial relations is definitely taking shape.

FEDERAL LABOR LAW

For the purposes of our discussion let us refresh ourselves with the text of section 7 (a) of the National Industrial Recovery Act, which is as follows:

> Every code of fair competition, agreement, and license approved, prescribed, or issued under this title I shall contain the following conditions:
>
> (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing and shall be free from interference, restraint, or coercion of employers of labor or their agents in the designation of such representatives or in self-organization, or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.
>
> (2) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

UNDERLYING IDEAS

The ideas underlying this section are very simple. The worker is treated as a free person. He is accorded the right to associate with fellow workers, to join or refrain from joining any labor organization. He is protected from the acts of aggression of his employer. His helplessness as an individual in bargaining with his employer is recognized.

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This section seeks to equalize the bargaining power of employers and employees by permitting the latter to pool their strength, for theoretical freedom of contract can exist only between equals. The statute recognizes the evils resulting from the present inequalities of bargaining power and proposes as a legislative remedy a regime of collective bargaining.

Having permitted industry to unite through merger and consolidation into powerful corporate units, and having encouraged business to form trade associations covering entire industries, Congress sought to effect an economic balance through collective bargaining and the free association of workers in labor organizations. Only in this way could the workers achieve even a meager sense of security.

HISTORICAL ANTECEDENTS

From the spirited opposition to the inclusion of this provision in the National Industrial Recovery Act, and the difficulties experienced in its administration, and from the attacks that have been leveled against the National Labor Relations Board for attempting to carry out this statutory mandate, one would imagine that section 7 (a) constituted an innovation in the legal control of labor relations, that it had sprung from the minds of Congress, and that it was lacking in historical antecedents. On the contrary, there are many phases of this section which are deeply rooted in our statutory- and common-law experience. Its immediate progenitors were: (a) The statement attached to the proclamation of President Wilson establishing the National War Labor Board in 1918:

RIGHTS TO ORGANIZE

1. The right of workers to organize in trade unions and to bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employers in any manner whatsoever. * * *

3. Employers shall not discharge workers for membership in trade unions nor for legitimate trade-uuion activities.

(b) Section 2, subdivision 3, of the Railway Labor Act of 1926:

Representatives, for the purposes of this act, shall be designated by the respective parties in such a manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

[2333] I could go on indefinitely and quote from many other authoritative declarations and statutes. For example, the Norris-LaGuardia Act of 1932, section 2, subdivision (p) and (q) of section 77 of the 1933 Amendments to the National Bankruptcy Act, and many others.

I am not taking the position that section 7 (a) does not take us into new territory; my analysis will show the contrary. I am, however, seeking to show that section 7 (a) was the orderly and logical culmination of the efforts on the part of the Federal Government to free the laboring man from the restrictions imposed by employers and to afford same the opportunity to associate freely with his fellow workers for the betterment of working conditions and the improvement of his status in our economic system. Section 7 (a) primarily creates rights

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in organizations of workers. There are four aspects of this section 7 (a) to be considered:

First. The section recognizes and establishes the right of employees to organize and bargain collectively through representatives of their own choosing. The statute in this regard merely codifies common-law doctrines of long standing As was said by Chief Justice Hughes in *Texas & New Orleans Railway Co.* v. *Brotherhood of Railway Clerks* (281 U. S. 548):

> It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work.

Mr. Chairman, I ask unanimous consent to insert in my remarks an address delivered by Francis J. Haas, former member of the National Labor Board and at present a member of the Labor Advisory Board of the N. R. A., which deals entirely with this question and simplifies it in such a manner that every Member of Congress will fairly understand it.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The address referred to is as follows:

SIX QUESTIONS AND ANSWERS ABOUT SECTION 7 (A)

No doubt you have all heard it said that section 7 (a) needs clarification, that on certain points it needs interpretation. Now I hope that if there is any confusion about section 7 (a) I will not add to it this morning. Personally, I don't see the point about confusion in section 7 (a) or the claim that it needs clarification. In my opinion, the only difficulty about section 7 (a) is that it is so clear.

In order to give definite and precise limits to our discussion this morning, I shall propose six questions and confine my answers and comments to those six questions:

1. What is section 7 (a)?
2. What is it for?
3. How does it work?
4. What benefits does it secure?
5. How has it fared under N. R. A.?
6. What is the outlook for it?

First, what is section 7 (a)?

The answer is found, of course, in the act itself. It is section 7 (a). The heart of it is "That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization, or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Frankly, this is a labor section. The President, in signing the act, referred to it as the "new charter." He said, "Workers, too, are here given a new charter of rights long sought and hitherto denied."

The first essential feature about section 7 (a) is that it places no restriction on workers in choosing their representatives. It does not require them to choose their bargaining agents from a limited group, for example, fellow workers on the pay roll. It leaves them as free as all outside to select whatever person or persons or organization they want. Likewise, it leaves them entirely free to use any method they want—membership cards, acclamation, or ballot—in selecting their representatives. In a word, it is a worker's section, and the employer has nothing to say about the representatives to be selected or the method of selecting them. This feature is all important, for unless we keep it in mind we will not be able to discuss the company-union movement intelligently. The typical company union requires, as you undoubtedly are well aware, the representatives to be chosen from fellow employees on the pay roll, and of course, the law lays down no limitation

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of any kind. It gives unrestricted freedom of choice. For that reason, the company union, in its common acceptation, is illegal.

Furthermore, section 7 (a) outlaws discrimination. The word "discrimination" means making a distinction. Prescinding from agreement on the union shop, for the employer to make a distinction between workers because of union affiliation, whether they are prospective workers or those on his pay roll, is definitely illegal. When it can be shown that the purpose of such discrimination is to frustrate or to destroy self-organization, that action is a violation of law.

Now, there are different forms of discrimination. There is discrimination in hiring, in promoting, in demoting, in laying off, and in discharging workers. It is evident that the most effective kind of discrimination that an employer can practice is to discharge or lay off an employee. Certainly a labor union cannot exist if the employer is free to dismiss employees who join the union and especially those who are active in promoting union organization in the establishment. Sometimes the employer who is so minded need only dismiss one or two, and the movement stops there. The "public example" is enough.

Consequently, anything that is in motive discrimination, either as to promotion, reduction of force, or discharge, is unlawful. This interpretation has been followed consistently by the National Labor Board from the time of its establishment, August 5, 1933, and by its successor, the National Labor Relations Board, down to the present time. When it can be shown on evidence that the employer has discriminated against employees because of union activity, he is found to have violated the law, and he is ordered to reinstate them to their former positions. From a practical standpoint, the prohibition of discrimination is the heart of section 7 (a).

If I may digress for a moment, section 7 (a) is very democratic, inasmuch as, excepting the union-shop agreement, which is arrived at by collective bargaining, it requires the employer to refrain from making any distinction between his workers, because of memberhsip or nonmembership in a union. Neither the old National Labor Board nor the National Labor Relations Board holds that an employer is not free to reduce his force because of reduction in business; that the must keep a man who is clearly inefficient or insubordinate. But when it is proved before the Board or any of its regional boards that the motive was to break up organization, the employer is found guilty of an unlawful act and is obliged to reinstate the employee discriminated against to his previous occupation.

The next question is, What is section 7 (a) for?

The answer to this question is found in title I of the act. Title I declares it to be the policy of Congress, "to increase the consumption of industrial and agricultural products by increasing purchasing power." That was the theory the Congress adopted at the time the law was passed. It was the theory that the administration adopted when the act was signed. The President said: "The aim of this whole effort is to restore our rich domestic market by raising its vast consuming capacity."

You are aware, no doubt, that we are somewhere in the neighborhood of 40 billion dollars short of the national income that we had in 1929. We have the capacity, we have the plant, we have the materials to turn out far in excess of $40,000,000,000 more than in 1929. To get this result, the administration in June 1933, said—and it has not modified or reversed its position since—that to get recovery going and maintain prosperity, you must constantly increase the buying power of workers.

Section 7 (a), like the minimum wage provisions in the codes, is frankly for the purpose of increasing wages and shortening hours. Its central aim is that of the act itself, to increase the purchasing power of the largest consuming group, the wage earning population.

You might ask: "How can you increase buying power through this section of the act?" The answer is, that you will increase the purchasing power of workers by having them organized in unions, because the officers of those unions will, without fear of discharge, do the bargaining, and because they are free, will get a better bargain in the form of higher wages and shorter hours. That is not a theory, but a fact. We know that in the organized trades wages are higher and hours much lower than in the unorganized. That is the lesson of the last 50 years. The unorganized trades are the ones in which earnings are low and hours high. The organized are the ones in which earnings are high and hours low.

Increased purchasing power is effected by putting the worker on an equal bargaining level with the employer. The best way to bring this out is to compare the bargaining power of a steel worker, let us say in Gary, Ind., with the United

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States Steel Corporation. This man, standing alone, has no contracting power equal in any sense with that of the corporation. Suppose, just to fill out the picture, that this man would insist on dealing with the local superintendent in Gary. Suppose he goes up to the main office and says. "Let us sit down and bargain this thing out. I am not satisfied with 40 cents an hour, let us negotiate. I want shorter hours. I don't like some of the things my boss does." The man would not dream of doing a thing like this. He knows what would happen to him, he would find himself out of a job. Yet this is the end result of the process called individual bargaining. The actual fact is that in the overwhelming number of non-union establishments there is not any kind of bargaining at all. The worker is simply told what wages he is going to get and what hours he will have to work. The bargaining strength is all on one side, that of the employer.

Now in order to bring up the weak side of the wage bargain, the act says in effect, let this man have an expert bargainer. Let him **[2334]** pick out somebody who can go into the foreman's office and who will have just as much knowledge of wage rates, trade conditions, and the rest, as the foreman has. Let him pick out this man freely. Above all, don't make him select as his representative somebody the steel company wants, someone on the pay roll, a company union man. Now that is the substance of the whole thing. When you have wage bargaining done that way, you have increased wages, lowered hours, and have given the worker some control over his job. That is the answer to the question: "What is section 7 (a) for?" It is to give that man in the steel industry, in the aluminum industry, and all along the line, contractual power approximating that of the employer, and the end result will be higher wages and greater consuming power.

The next question is, How does this thing work?

We have abundant experience to go by in answering this question. Before N. R. A., the workers in certain industries, through their union officials, bargained collectively with employers. In the printing trades, for example, the officers of the union went into conference with the newspaper publishers to work out a contract either for the entire industry or for a regional section. The negotiations lasted 2 or 3 days, perhaps a week, and finally the terms were put in writing and signed by the union and the publishers. A document of this kind was called a trade agreement. Sometimes it covered one city, sometimes several cities. The same thing was done in the pottery trades; in the clothing trades; in the textile industry; and in every trade or industry where there was organization. The representatives of the employers and the representatives of the employees went into conference, freely giving and taking, and worked out a trade agreement.

Since N. R. A. the same procedure has been followed. In trades where the unions were strong, the officials came here to Washington and in cooperation with the Labor Advisory Board, bargained with the representatives of the industry and incorporated in the code, not the union agreement, but, in all cases, better terms than those in codes covering industries in which there were no unions. That is the way the thing has been done since N. R. A. I do not want to leave the impression, however, that there have been no trade agreements worked out independently of N. R. A. since June 1933. Actually there have been hundreds.

So far as the contribution of union organization to recovery is concerned, it is no secret that the codes of industries in which there is union organization are the codes that, from the standpoint of enforcement, are working the most satisfactorily. Take the average code embracing only unskilled, unorganized workers and you will find that the enforcement of labor provisions is almost nil. Take, on the other hand, the apparel, printing, and construction codes, codes which embrace workers more or less well organized. There you will find enforcement, and N. R. A. points to them with a feeling of accomplishment.

The next question is: "What benefits does collective bargaining under section 7 (a) secure?"

Of course the most important benefit is better wages and hours. Collective bargaining increases wages and shortens hours and in well-organized trades gives the worker something like a right to his job or a control over it, that is protection against unwarranted discharge. Now that is a most important benefit. But from a social standpoint or even from the employer's standpoint it yields another benefit that should not be overlooked. Collective bargaining prevents a tremendous amount of industrial waste. Where you have genuine collective bargaining you can do away with espionage, guards, blacklists, open-shop secretaries, counsel, literature, and office expense. You can do away with the cost of buying mayors, chiefs of police, and aldermen. With collective bargaining accepted, you don't have to do these things, because their purpose is to prevent collective bargaining.

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Let me give an illustration or two. A few years ago Miss Josephine Roche remarked that when she took over the property bequeathed to her by her father, she was short some 15 or 20 percent of control. She got busy and raised the money necessary for 51 percent control and then arranged to deal openly and frankly with the union. When she announced her plan to the board of directors, they replied, "You can't do that—look at the way the unions will raise your costs." She asked what the increase would be, and they gave her an estimate. She said, "That is nothing", and pointed out that it was less than the amount expended the year before to maintain the spy system and to fight the union. She said, "We will save all that," and, as I recall, the saving was considerably more than the increased labor cost.

One of the union officials in the shipbuilding industry told me the other day that he made a proposition to one of the shipbuilders. He said, "If you will deal with us, we will save you some real money. We will assure you that there will be no strikes; we will give you bona fide mechanics, and right off the bat we will save your company $30,000." The shipbuilder said, "How will you save us $30,000?" He said, "You are spending that much a month now because of the red scare that one Communist has spread through one yard alone, and you can be sure you won't have to spend that much at least." The saving of industrial waste is, then, one important benefit of collective bargaining.

Another important benefit that arises from the honest, candid acceptance of section 7 (a) is cooperation. I am not speaking generally now, but very definitely. It is a mistake to regard the union as a fighting machine only. It is a fighting machine: but the trade association is also.

The trade association has been found on occasion to be training its guns on the public by exacting unjust prices. The Department of Justice files have all too much evidence showing the extent of this evil. The union may be a fighting machine, but it does not have to be. That is not of its essence. It can and should be, and when honestly and sincerely dealt with is an outlet for union workers to promote the interests of the industry.

I recall a few years ago a case in Milwaukee where a union organizer, who had been a garment worker, proposed to an employer who was in difficulty a new way of routing work through the shop. The employer put it in, and it solved the most perplexing cost problem he had, so that he was able to stay in business and make money. I am not saying that at some later time the employer might not have thought of the scheme himself, but the fact is it was worked out by the union organizer.

Another very important benefit of collective bargaining is that it helps to educate workers. It gives them an opportunity to know what the industry can stand. There are cases where an employer cannot meet the demands that workers make on him. But can we expect them to take the employer's word for it. It is different when the union officials tell them so. If the employer deals with the union officers frankly, they are not going to ask for things that are impossible. The National Labor Relations Board has had more than one case where the union, after the books had been shown to them, receded from what appeared to be unreasonable demands. In other words the workers got an education. The same thing applies to employers.

I don't want to philosophize, but to me, the great defect in the way we have been conducting business and industry for years is that employers in the highest positions of power, have been delegating, hiring out, the most important job they have with regard to wages and hours, and that is the job of thinking. There are other items in production besides labor, raw materials, credit and marketing, and these the employer carefully studies out. He has to think about them, study them and know them. But he has exempted himself from the important business of thinking about labor relations and especially the connection between wages and purchasing power. My complaint is that he has been hiring this job out (I don't want to make invidious comparisons) to $2,000 and $3,000 men.

I happen to know that the labor program in a dominant corporation in one of the basic industries was written by a subordinate. He was just told to get the thing ready, and his production, a very shabby performance, is the official statement on labor for that industry. Of course, the underlying ideas are those of the chairman of the board of directors, but they are the ideas of men entirely out of touch with working people and the requirements of our abundance economy. Not being willing to meet with the informed leaders of laboring people, and to spend as much time with them as with bankers, industrialists, mainly in the basic industries have cut themselves off from an all-important source of information. They have,

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prevented the elementary truth from getting to them, necessary alike for their own and for the workers' welfare, that there is no need of producing goods unless there are customers to buy, and that there can be no adequate buying unless there is adequate wages and adequate employment. As I see it, one of the great contributions that section 7 (a) can make is that it compels the employer to get educated.

Some weeks ago I had a rather striking illustration of this thing, going out to my home town, Racine, Wis. A strike was on there in a rubber-clothing factory. Perhaps you have read about it. It was one of those cases that the Associated Press picks up because unusual things are happening. Women strikers were picketing by throwing themselves on the tracks in front of freight trains coming out of the factory with finished merchandise. Now nobody runs over ladies with freight trains, and of course none of them was run over. The strike had been going on for some 8 weeks.

By chance I met a man who had been acting as mediator in the case, and he asked me to sit in with him. What I found was that the union officials had been dealing with a subordinate who was the general superintendent of the plant, but who had very limited authority. I suggested that the workers' committee try to meet with the board of directors of the company. The same afternoon, they succeeded in seeing the chairman of the board and the whole trouble was settled the next day. The final conference brought out the fact that whatever the explanation, whether the superintendent had been keeping the real situation from the board or whether the board did not want it, the board simply did not know it, and if it had known it a long and costly strike could undoubtedly have been avoided.

The next question is, How has section 7 (a) faired under N. R. A.?

I don't think it would be much of a job to show that the index of success of section 7 (a) under N. R. A. is about the same as the index of reemployment under N. R. A. The fact is, and there is no need of minimizing it, that since the act was passed, powerful employers have fought section 7 (a) tooth and nail. They have fought it in different ways. First, superintendents and foremen have "talked" with workers' committees instead of genuinely bargaining with them. In my experience of 9 months as a member of the National Labor Board, I found that to be the most effective way of evading the act. The union representatives came in, things were talked over with them, and they were told to come in the next day or next week. The following week they [2335] were told that authorization had not yet come from the board of directors in New York, or that the chairman who had the final word was in Florida and could not be reached. And so the conferences were strung out and out and nothing was agreed to. There was more than one instance where this subterfuge was resorted to. The employer had no intention of coming to an agreement, but kept within the law by meeting and treating with the representatives of the workers.

Since June 1933 two main instruments have been used to defeat section 7 (a). They are the company union and multiple representation. The National Industrial Conference Board reported last fall from a 6-month study of 3,314 establishments, covering 2,585,000 employees, that the company union had increased from 14 to 45 percent and the independent union 4 to 10 percent.

There are many names for the company union, employees' representation plan, employees' welfare association, workers' council, and numerous others. In one case a chain-store company in Philadelphia organized its truck drivers into a "drivers' club." The name is not so important, and I shall call it what the act calls it—company union. So far as it is defended, the argument is made that employers should not be obliged to deal with anyone but people in the plant, because they are the ones who know plant problems. Outsiders are outsiders, and they don't know anything about mixing chemicals, fixing looms, matching patterns, or rolling steel. Only the people right in the shop know shop conditions. As a matter of fact, under a good many unions, in printing shops, for example, the shop committee under the shop steward, adjusts disputes peculiar to the shop. But the important fact is that he is linked up with outside union officials who can be appealed to for assistance in case the shop steward or the people under him feel that they are not being fairly treated. This outside connection means everything to the man or woman in the shop, and it is precisely for this reason that the employer does not want it to exist.

The company union is sometimes defended on the ground that it gives workers better wages and hours than they would otherwise have. The president of an oil company in a session I had with him sometime ago made this argument:

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"Look at our employees' representation plan. Compare our wage levels for 15 years with the unskilled levels in the same locality. We are way above them, by 15 or 20 cents an hour. The employees' representation plan has boosted our wages." Now in this company that was not the case. The company had to have superior workers, and the president innocently gave away his whole argument. He said, "We can't afford, in our refining plant, to have anybody but reliable men. A fellow that does not know the machinery and is not responsible might turn the wrong switch and blow up the whole place and kill hundreds of people. We have to have high-grade workers."

Now my point is that the company paid 15 or 20 cents more than the going hourly rates, not because of the bargaining aggressiveness of the company union, but because the company had to have superior workers and market conditions forced it to pay nothing less. The same is true of all company unions, in companies similarly situated.

Another device invented to frustrate the operation of section 7 (a) is the theory of multiple representation, sometimes called minority representation. The theory is that each minority group of workers, and indeed each individual worker, should bargain with the employer. Of course, it denies that the representatives of the majority should be the exclusive bargaining agency for the entire plant or section group.

Whatever might be said in favor of the ideal of having every group in a factory have its own representatives or of having the individual be his own representative, the fact is that in practice, multiple or minority representation completely disrupts collective bargaining and puts the workers under the employer's domination. It enables the employer to play one group against the other. He will, of course, get lower wages and longer hours from the most compliant and least militant group, that is, the company union. Especially when jobs are scarce, the outside union will have to come down to the terms that the company union accepts. The outside union not being able to show results to its members will soon disappear, and the employer will then have things his own way.

There are cases, too, where the employer will make concessions to the company union that he will not make to the outside union. Again the employer gets the benefit. The outside union is discredited before its members and the employer through the subservient company union, will have things his own way.

This latter scheme, however, is something that the employer has to use with the greatest care. I recall the case of a soup company employing some 1,800 workers that granted six holidays with pay to the company union and announced this fact through the officers of the company union to all of the employees, many of whom were union members. The bargaining committee of the outside union had been refused this concession from the management, and when the announcement of the pay for holidays was made there was a long and bitter strike.

From whatever angle you view it, multiple or minority representation can have no place in honest and sincere collective bargaining. The purpose is the opposite of collective bargaining, as it puts wage and hour control ultimately in the hands of management. Clearly it nullifies all that section 7 (a) endeavors to achieve in the way of increased buying power for workers.

Finally, what is the outlook for section 7 (a)?

The only way to make predictions is to look at what has happened up to now, especially since N. R. A. At present, only 1 out of every 10 wage earners is in a bona fide union. The relatively small gains made since N. R. A. have been made in the face of overwhelming opposition. In the last 18 months industrialists have devised numerous schemes and subterfuges to stop organization. They have in some cases, as the files of the National Labor Relations Board show, discharged their entire working force and rehired only those who agreed to drop their union membership. Again, they have in numerous instances financed and promoted company unions. One large insurance company has sent out standard company-union forms with instructions to employers showing them how to install the company union in their establishments. Also, they have concocted and ardently advocated the multiple-representation scheme, whose certain result, as I have already shown, is to render collective bargaining impossible and place workers in the complete control of the employer.

In the face of all this, the prospect for genuine self-organization to increase purchasing power of workers is not bright. To make matters still worse, another attack on collective bargaining is being made at present. It is the attempt to forbid by law "coercion" in promoting organization. Thus the United States

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Chamber of Commerce has declared for collective bargaining with the proviso that workers be permitted to organize without coercion from either employers or workers.

On the face of it this proviso is fair enough. Nobody wants coercion, and certainly no one wants violence. The trouble is, however, that if the coercion clause, usually worded, "without coercion from any source", is put into the law, it will breed a mass of legal complications and effectively block self-organization. Who is going to define coercion practiced by union officials? Is it coercion for a union organizer to go to a worker's home and use his ordinary powers of persuasion to get him to join the union? Although the same thing is done, and lawfully, in political campaigns, an unfriendly judge will interpret the organizer's act as coercion and issue an injunction to stop organization. On the other hand, if the union organizer exceeds the limits of peaceful persuasion by threatening or using violence, he can readily be restrained under existing laws. There are more than sufficient statutes to invoke to keep him within the limits of argument. and there is no need of putting the "coercion" clause in a labor statute, particularly when it will be used to thwart the whole purpose of the statute.

Those who are clamoring for the "coercion from any source" clause should be made to show their hand and say exactly why they want the clause in the law. Existing statutes can more than take care of the unlawful coercion which union organizers are presumed to be anxious to indulge in. The realistic person should recognize the "coercion" clause for what it is, one more device to obstruct self-organization. At present it constitutes one more attempt to block collective bargaining, and its purpose should be clearly understood.

To conclude, a wage contract is just and equitable only when the worker who enters it does what everybody else does who makes a contract—that is, gives free consent. Certainly there is no free consent under the arrangement prevailing in more than two-thirds of American industry, under which the worker is not permitted to bargain at all but is simply told what he is going to get.

The company union, with all its employer controls, is in no sense a remedy for this evil. In fact, it leaves the evil just where it was. Only when workers are represented by the persons they want to represent them—that is, by bargaining officials just as keen and alert as those the employer hires—can the individual toiler have something like freedom in the wage contract. Then the contract will be worthy of the name. Then the waste of industrial warfare will be eliminated, and through genuine cooperation of both parties we can hope to meet the great need of the American people, a constantly expanding volume of goods and services.

This is the meaning of section 7 (a), and, in an important sense, the meaning of the whole N. R. A.

Mr. BOLAND. Mr. Chairman, if we delve far enough into the past, we find that at one time the right to organize was denied to labor, that the formation of a labor union was regarded as a criminal conspiracy, and that collective bargaining for a standard wage was deemed price-fixing, and therefore an unlawful restraint of trade. Happily we have traveled far from those inhospitable precedents and the trend of judicial opinion long before the recovery act, was already favorable to union organization and collective bargaining.

Second, the provision establishes the right of employees to be free from three classes of acts on the part of employers, namely, interference, restraint, and coercion, insofar as they affect three phases of employee activity; namely, the designation of representatives, self-organization, and other concerted activities for the purpose of collective bargaining or other mutual aid or protection. In other words, this branch of the statute forbids at least nine sep- **[2336]** arate acts on the part of employers and creates nine statutory offenses. This can be made clear by one illustration. Employers are prohibited from (1) interfering with the designation of representatives by employees, (2) interfering with the self-organization of employees,

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(3) interfering with other concerted activities for the purpose of collective bargaining, and so forth. The same is true regarding restraint and coercion. Frequently these offenses will overlap, but not necessarily so.

It is not difficult to sustain this branch of the statute. Again the Texas & New Orleans case, arising on almost identical language in the Railway Labor Act of 1926, is virtually conclusive. If we assume, as we must, that employees have the right to organize, to designate representatives and to bargain collectively, then obviously employers have no right and are under a duty to refrain from interfering with or restraining or coercing employees in the exercise of such rights. There are, moreover, many State statutory precedents preventing either physical or economic interference, restraint, or coercion.

Third, the provision prohibits the imposition of the requirement that employees as a condition of employment join a company union. The statute does not define the term "company union." I personally prefer the term "company-dominated union,"since the statute does not appear to have been directed toward a resolution of the perennial controversy between vertical and craft unionism. A company-dominated union, typically is one which is initiated and created by the employer, in which the employer participates in its administration and operations, in which he is represented on all the committees, and either supervises, initiates, or participates in the decisions or exercises a veto power over them, in which the employer can veto all proposals for amendments in the organic charter of the organization, and in which he provides the organization with financial aid and comfort. In a word, a company-dominated organization is one which is lacking in independence, and which owes a dual obligation to employers and employees. It is an agent which possesses two masters. It attempts to sell the labor of its employee members to the employer member, and at the same time it receives compensation from the employer. It acts through representatives who are in the employ of the company, who are subject to discharge and discipline by the management at any time, who purport to represent employees and receive at the same time compensation from the employer for their activities presumably in the employee's behalf. To require an employee or one seeking employment to join such a union is to nullify the rights of self-organization and to make a mockery of collective bargaining.

Finally, the statute prohibits the imposition of the condition that employees shall refrain from joining, organizing, or assisting a labor organization of their own choosing. This in terms invalidates the "yellow dog" contract, by means of which employer successfully prevented unionization. A "yellow dog" contract typically bound the employee not to join a labor organization of his own choosing. A union organizer seeking to influence workers who had entered into such contracts necessarily attempted to induce their breach and thereby subjected himself to the injunctive process of the courts. The Norris-LaGuardia Act invalidates such agreements so far as enforcement in the Federal courts is concerned, and the Recovery Act goes further and outlaws the imposition of such conditions, whether by contract or otherwise.

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IV. PROBLEMS OF CONSTRUCTION

In the administration and enforcement of section 7 (a), various ambiguities of language and deficiencies of draftsmanship have become evident and have caused difficulty. These will be enumerated and discussed briefly.

First. Collective bargaining: The statute, as we have observed, confers various rights on employees, but in the case of the right of collective bargaining, imposes no express obligation upon the employer to bargain collectively with the representatives of the employees. Unless this obligation is to be implied, the right conferred upon labor would be wholly negatory. Nevertheless, many employers have contended before the National Labor Labor Board that the statute imposes no such duty. They have argued that their obligation ended when they had made themselves available to the workers and had listened to their grievances and demands. Even assuming some obligation, what is its nature and content? It certainly implies more than merely receiving representatives and conversing politely with them. In my opinion, the statute required employers to enter into negotiations with the duly chosen representatives of the employees and to make every reasonable effort in good faith to reach an agerement. You will observe, as you read the statute, that this construction is based entirely upon what is implicit in the wording of the act and not upon any express provisions. To avoid unnecessary dispute, it seems to me that the statute should be revised, and the obligation of employers should be made express.

Second. Union as representative: Another question that has caused difficulty is whether a union as such can be designated as the representative of employees. Since the statute uses the plural, the contention has been advanced that only individuals can be selected as representatives. This construction seems untenable. The term is used generically and included organizations or legal entities as well as individuals.

Third. Contracts with unions: Assuming that a union can be a representative, is there any requirement that the employer enter into a contract with the union as such? A great number of strikes have occurred over this issue. Employers, while recognizing the rights of employees to organize, and their own obligation to bargain with the union as the chosen representative of their employees, have resisted the demand for a union contract. Workers have striven for union recognition and have contended that such recognition was not being accorded unless the employer actually entered into a contract with the union. Many compromise formulas have been contrived. I personally believe that the issue in most respects is an empty one and that a good deal of blood has been unnecessarily shed over it. I do not believe that there is any definite and affirmative obligation in the statute requiring the parties to execute a written agreement. The statute is satisfied if both parties, as I have said, exert every reasonable effort to reach agreement. The nature of the contract is properly the subject of negotiation and bargaining. Consequently, in my opinion, the statute neither requires nor prohibits a contract with the union. Following the law of agency, it is evident that the workers can designate any agent they see fit as their representative, and that contracts

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can be made by and in the name of their agent. For this reason it seems to me that collective agreements should be executed between the employer and the employees acting through and represented by their representative. If the latter is a union, that means that the contract may properly be made in the name of the union as representative of the employees of a particular company.

Choice of representatives: How are representatives to be chosen? The statute provides no express answer. The National Labor Board developed the secret-ballot election as an administrative device for the selection of representatives. Has the Board any power to require elections? It might be argued that this power is implicit in the statute as a necessary means of determining and designating representatives. By an Executive order, such power was expressly conferred upon the Board. The validity of that order depends upon whether it is such a rule and regulation as is necessary to carry out the purposes of the statute. To conduct reliable elections, cooperation of the employer is frequently necessary. The geographical location of the plant may be such as to require elections upon the company premises. Pay rolls or lists of employees are essential in larger plants to identify the voters. The Executive order does not, in terms, impose **[2337]** any affirmative duty on employers to cooperate in the conduct of elections. It does prevent interference with the conduct of an election. Whether such a duty can be implied is one of the questions involved in the Weirton case.

Majority, minority rule: Assuming there has been selection of representatives through an election or otherwise, do the representatives speak for all the employees or merely for those who elected them? Stated differently, What are the rights of the minority? The President's order provided that the representatives shall represent all those who were eligible to participate in the election. This has been the position of the National Labor Board. The Recovery Administration, however, has ruled that the majority representatives merely speak for the majority, and that the minority is entitled to make separate contracts with the employer. The statute gives "employees" the right to organize and bargain collectively through representatives. Does the term "employees" mean any employees or group, or is it used generically to mean all employees? A literal construction would permit individual bargaining and the making of separate contracts with various groups. It is the opinion of labor experts that such multiple bargaining results in chaos and precludes effective collective bargaining. Since the statute gives employees, as a class, the right to bargain collectively through their representatives, it must be assumed that Congress intended the right to be exercised effectively. It must not be forgotten that in current industrial practice, a uniform wage scale prevails. Under a regime of individual bargaining, the wage scale is established by the employer alone. The management is both the executive and the legislative agency of the plant. Under collective bargaining, however, the conditions of employment are established jointly by the management and the workers' representatives. The majority representatives and the employer should constitute the joint legislative body to establish conditions of employment for all.

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Proportional representation, if construed to require unanimous consent on the part of the groups represented, retains all the evils of multiple bargaining. It divides the workers among themselves where there are competing labor groups and destroys the unity of purpose which is essential to effective bargaining. Minority contracts permit the employer to play one labor group against the other and to use the more pliant group to destroy the more militant one. A series of separate contracts with varying rates would create an intolerable condition and sanction unfair competition among workers. In my opinion, therefore, the majority rule is the only feasible method of representation, is necessarily implicit in the idea of an election, and is consistent with our democratic institutions.

Closed shop: Does the statute outlaw the closed shop? Is the worker denied the right to choose his representatives if he is required to join a trade union? Clause 2 prevents the imposition of the condition that a worker join a company union. It does not expressly invalidate the requirement that he join a bona fide union. He may not, however, be required to refrain from joining a labor organization of his own choice. The wording of clause 2 therefore permits the construction that a worker can be required as a condition of employment to join a bona fide union. If the union bylaws do not prevent his joining any other organization, there is no impairment of his right to belong to an organization of his own choice.

It must not be forgotten that this statute was intended to increase rather than limit the rights of labor. There is nothing in the legislative history of the statute disclosing any intention to forbid the closed shop. Closed-shop agreements were in force in many industries. It would require fairly definite proof that Congress intended to invalidate effective collective agreements of long standing. Under all the circumstances, I believe it can be maintained that a closed-shop arrangement is in harmony with the requirements of the Federal law. The issue has arisen collaterally in recent State court cases determining whether a strike for a closed shop is legal justification for picketing, etc., and has been resolved both for and against the position taken here.

Discharges: Does the statute forbid discharges or discrimination for union activity? It seems to me that subdivision 2, fairly construed, prohibits discharge or other discrimination, although the language employed is "condition of employment." The question, however, is not entirely free from difficulty. A corollary of this problem is whether employers can be required to reinstate discharged employees, and further, whether they can be required to provide back pay for the period of discharge. The National Labor Board has ruled administratively that reinstatement may be required, and some of the compliance boards have required back pay.

Reinstatement of striking employees: Suppose during the strike an employer hires "scabs" and refused to bargain collectively with the representatives of the strikers. The National Labor Board, in accord with court decision, has ruled that a striking employee is an employee and thus is entitled to vote and to be represented for purposes of collective bargaining. It has frequently recommended reinstatement of such employees. Whether there is any legal power to require such reinstatement, where there has been no violation of the statute by the

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employer, is doubtful. But discrimination in the reinstatement of striking employees is inconsistent with the statutory requirements.

Meaning of interference and company unions: The proper meaning of interference has caused difficulty. Is it "interference" for an employer to initiate a company union, to participate in its administration, to restrict changes in its constitution, to exercise a veto power over its decisions, to influence its policies, or to contribute financial support to the organization or its representatives? These issues have been presented in the abstract. The cases before the National Labor Board involved company unions completely dominated by the employer and in which there were obvious acts of interference. The Labor Board has construed the statute liberally so as to prevent offensive and aggressive acts of interference. It is evident that there is here raised an important and difficult question of construction on which the statutory language provides little assistance. Another question in the same category is whether a lockout to prevent unionization is forbidden. Similarly, initiation of a company union in the midst of a strike may be an effective method of preventing true self-organization. In my opinion, these, along with any other acts impairing the freedom of action of labor organizations, should be deemed prohibited by the statute.

The effect of the acquiescence of employees in acts of aggression of employers and the interference and domination of their organization by the employer: The statute as worded does not cast any blanket prohibition against the acts of aggression of employers. If the employees, without interference in the expression of their will, approve of emplyers' interference, I suppose it can be urged that there has been no violation. The cases will depend upon their facts, and it seems conceivable to me that in certain cases of domination the apparent acquiescence of employees should not be a bar to prosecution. In this connection it may be observed that a potent method of interference is for an employer to bring about a premature election in order to prevent real self-organization and to create an appearance of acquiescence.

Does the statute impose any obligation on either labor or management to arbitrate their differences? It seems clear that there is no such obligation, apart from a provision in a collective agreement, although the contrary has been urged. Whether a collective agreement should contain an arbitration clause is obviously a proper subject of collective bargaining.

Organization of employees: Does the statute impose any obligation upon employees? Must they present grievances before striking? Must they refrain from coercion and intimidation of employers or fellow employees?

[2338] The obligations of the entire statute, as well as section 7, are seemingly directed against employers. The obligations of employees are well known and are enforced in the courts on the basis of other statutes and the common law. A theoretical argument of fairness can be developed to the effect that affirmative obligations should be imposed upon employees. No one is more opposed to labor racketeering, intimidation, coercion, and violence than myself. Experience with the labor injunction, however, should make us wary of any legislation or construction expending the injunctive power. Too

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frequently have the terms "coercion and intimidation" been construed to prevent perfectly justifiable conduct on the part of labor. Section 7 imposes no enforceable obligation upon employees, but an enlightened leadership would require that grievances be submitted to employers and the processes of collective bargaining be exhausted before resort is had to strikes. It must not be forgotten that in times such as these, a strike is frequently an act of economic suicide rather than an effective method of improving working conditions.

Conclusion: If my discussion has been too technical and lacking in human interest, I take refuge in the technical nature of the subject and the knowledge that the more interesting philosophic and economic implications of this provision have been fully developed and are constantly being broadcast by voices more eloquent and competent than mine.

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74TH CONGRESS
1ST SESSION

H. R. 6187

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 1935

Mr. KENNEDY of New York introduced the following bill; which was referred to the Committee on Labor and ordered to be printed

A BILL

To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DECLARATION OF POLICY

SECTION 1. Equality of bargaining power between employers and employees is not attained when the organization of employers in the corporate and other forms of ownership association is not balanced by the free exercise by employees of the right to bargain collectively through representatives of their own choosing. Experience has proved

that in the absence of such equality the resultant failure to maintain equilibrim between the rate of wages and the rate of industrial expansion impairs economic stability and aggravates recurrent depressions, with consequent detriment to the general welfare and to the free flow of commerce. Denials of the right to bargain collectively lead also to strikes and other manifestations of economic strife, which create further obstacles to the free flow of commerce.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by ecnouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutal aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

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(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway

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Labor Act, as amended from time to time, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has eased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, or hours of employment.

(6) The term "commerce" means trade or commerce, or any transportation or communication relating thereto, among the several States, or between the District

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of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, re-

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gardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order of the

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President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation,

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or employment. The Board shall appoint such employees, and, without regard for the provisions of the civil-service laws or the Classification Act of 1923, as amended, appoint and fix the compensation of an executive secretary, assistant executive secretaries, and such attorneys, special experts, examiners, and regional directors, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in

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the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board Shall be transferred to and become employees of the Board at their present grades and salaries, without acquiring by such transfer a permanent or civil-service status. All rec-

ords, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this

Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

(b) The Board shall have authority and is directed to study the activities of such boards and agencies as have been or may be hereafter established by agreement, code, or law to deal with labor disputes, and to receive from such boards reports of their activities.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own

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choosing; and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That, subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

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(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the majority of the employees in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other condi-

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tions of employment: *Provided*, That any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing.

(b) The Board shall decide whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

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(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (d) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (f) or 10 (g), and thereupon the decree of the court

enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise, except as provided in section 11.

(b) The Board may, in its discretion, defer its exercise of jurisdiction over any such unfair labor practice in any case where there is another means of prevention provided for by agreement, code, law, or otherwise, which has not been utilized. But in any case where the Board has so deferred, the Board may at any time thereafter institute proceedings under this Act in order to assure the effectuation of the policy of this Act and the development of a uniform body of administrative interpretation and practice with respect to unfair labor practices as defined herein.

(c) Whenever there is a charge or the Board shall have reason to believe that any person has engaged in or is engaging in any such unfair labor practice, the Board, or

any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that

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respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than three days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer and to appear in person or otherwise and give testimony at the place and time fixed in the complaint, and to invoke the compulsory process of the Board in summoning witnesses in its behalf. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(d) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged

in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including restitution, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dissolving the said complaint.

(e) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(f) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States within any circuit wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, or the Court of Appeals of the District of Columbia, for the enforcement of such order and for appropriate tem-

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porary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceeding set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its

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member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(g) Any person aggrieved by an order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified

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by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (f), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(h) The commencement of proceedings under subsection (f) or (g) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(i) When granting appropriate temporary relief or restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

(j) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

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SEC. 11. The several District Courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice affecting commerce; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, but solely at the request of the National Labor Relations Board, to institute proceedings in equity to prevent and restrain any such unfair labor practice, in the judicial district wherein such unfair labor practice occurred or wherein the person complained of resides or transacts business. Such proceedings may be by way of petition setting forth the case and praying that such violation be enjoined and that such affirmative action, including restitution, be required as will effectuate the policies of this Act. When such person shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearings, and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

ARBITRATION

SEC. 12. (a) The Board shall have power to act and

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to appoint any person, agent, or agency to act as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the

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Board or its appointees. A provision in a written contract or a written agreement to submit to the arbitration of the Board or its appointees, when accepted by the Board after the dispute has arisen, shall be valid and irrevocable as to the parties to the agreement, save upon such grounds as exist at law or in equity for the revocation of any contract. If any party fails, neglects, or refuses to perform under such contract or submission, the Board, its agents or appointees, may nevertheless, in the discretion of the Board, proceed to hear the case ex parte, and the Board, its agents or appointees, shall have the power to issue an award applicable to the submitting parties.

(b) The Board shall make and publish, pursuant to section 6 (a), rules for the conduct of arbitrations, and an agreement to submit to the arbitration of the Board, or its appointees or its agents, shall be deemed consent to the proceeding being conducted in accordance with such rules then obtaining unless otherwise specified in the arbitration contract or submission. An agreement to submit to the Board shall authorize the Board to appoint agents to take evidence, and in the discretion of the Board, to render a decision in the name of the Board on the findings thus presented, unless otherwise specified in the agreement. The Board may, however, in its discretion, render a decision on testimony taken before its agents.

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(c) In any case in which an award has been made, the Board shall file the award in the clerk's office of the United States District Court that has been agreed upon by the parties, or, in default of such agreement, that of the district wherein the labor dispute arose or the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award on the grounds hereinafter set forth shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment in accordance with the terms of the award: *Provided*, That no employee individually, and no group of employees collectively, shall be compelled to render labor or services without their consent.

(d) A petition for the impeachment of any award may be filed not more than ten days after the communication of notice of the filing of the award to the submitting parties. Notice of filing of such petition shall be served personally or sent by registered mail to each submitting

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party. The petition shall be sustained by the court only on one or more of the following grounds:

1. That the proceedings were not substantially in conformity with the provisions of the arbitration agreement or rules adopted for the conduct of the arbitration.

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2. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the award practiced fraud or corruption which affected the result: *Provided*, That partisanship known, or which by the exercise of due care should have been known, by a party prior to the arbitration proceeding, shall not constitute fraud of which he may avail himself within the meaning of this section.

(e) The court shall not set aside an award on the ground that it is invalid for uncertainty. In such case the court shall suspend action pending its resubmission of said award to the Board for interpretation.

(f) Where there was an evident material miscalculation of figures, or an evident material mistake in the description of any person, thing, or property referred to in the award, or where the arbitrators have awarded on a matter not submitted to them, unless it is a matter affecting the merits of the decision on the matters submitted or where the award is imperfect in the matter of form not affecting the matter of the controversy, the court shall modify and correct the award so as to effect the intent thereof and promote justice between the parties, and thereupon shall enter judgment in accordance with subsection (c).

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(g) The court shall construe every award with a view to favoring its validity. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but that a part of the award is valid, the court shall nevertheless enter judgment upon such part or parts of the award as are valid unless such part or parts are inseparable from the remainder of the award, in which case the entire award shall be vacated.

(h) If the petition for impeachment of the award is not sustained, the court shall enter judgment in accordance with the terms of the award, and in accordance with subsection (c). Where a petition for the impeachment of an award is granted, the award shall be vacated, and the court shall remand the arbitration to the Board, which may, in its discretion, accept the case for resubmission to arbitration in accordance with the terms of the original agreement or

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with such modifications as the Board deems fit, or it may refuse to take any further action regarding it.

INVESTIGATORY POWERS

SEC. 13. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9, section 10, and section 12 (in any arbitration affecting commerce)—

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(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, and the Supreme Court of the District of Columbia,

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upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning

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which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place

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of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 14. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of

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duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 15. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 16. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1,

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1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall apply.

SEC. 17. If any provision of this Act, or the application of such provision to any person or circumstance, shall be

held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 18. This Act may be cited as the "National Labor Relations Act."

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74TH CONGRESS
1ST SESSION

H. R. 6288

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 1935

MR. CONNERY introduced the following bill; which was referred to the Committee on Labor and ordered to be printed

A BILL

To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DECLARATION OF POLICY

SECTION 1. Equality of bargaining power between employers and employees is not attained when the organization of employers in the corporate and other forms of ownership association is not balanced by the free exercise by employees of the right to bargain collectively through representatives of their own choosing. Experience has proved

that in the absence of such equality the resultant failure to maintain equilibrium between the rate of wages and the rate of industrial expansion impairs economic stability and aggravates recurrent depressions, with consequent detriment to the general welfare and to the free flow of commerce. Denials of the right to bargain collectively lead also to strikes and other manifestations of economic strife, which create further obstacles to the free flow of commerce.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

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(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway

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Labor Act, as amended from time to time, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, or hours of employment.

(6) The term "commerce" means trade or commerce, or any transportation or communication relating thereto, among the several States, or between the District

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of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, re-

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gardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive order of the

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President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

SEC, 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation,

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or employment. The Board shall appoint such employees, and, without regard for the provisions of the civil-service laws or the Classification Act of 1923, as amended, appoint and fix the compensation of an executive secretary, assistant executive secretaries, and such attorneys, special experts, examiners, and regional directors, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the

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old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board at their present grades and salaries, without acquiring by such transfer a permanent or civil-service status. All rec-

ords, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this

Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

(b) The Board shall have authority and is directed to study the activities of such boards and agencies as have been or may be hereafter established by agreement, code, or law to deal with labor disputes, and to receive from such boards reports of their activities.

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RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

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(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the majority of the employees in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other condi-

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tions of employment: *Provided*, That any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing.

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(b) The Board shall decide whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (d) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (f) or 10 (g), and thereupon the decree of the court

enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise, except as provided in section 11.

(b) The Board may, in its discretion, defer in exercise of jurisdiction over any such unfair labor practice in any case where there is another means of prevention provided for by agreement, code, law, or otherwise, which has not been utilized. But in any case where the Board has so deferred, the Board may at any time thereafter institute proceedings under this Act in order to assure the effectuation of the policy of this Act and the development of a uniform body of administrative interpretation and practice with respect to unfair labor practices as defined herein.

(c) Whenever there is a charge or the Board shall have reason to believe that any person has engaged in or is engaging in any such unfair labor practice, the Board, or

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any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than three days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer and to appear in person or otherwise and give testimony at the place and time fixed in the complaint, and to invoke the compulsory process of the Board in summoning witnesses in its behalf. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(d) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged

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in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including restitution, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If, upon all the testimony taken, the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dissolving the said complaint.

(e) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(f) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States within any circuit wherein the unfair labor practice in ques-

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tion occurred or wherein such person resides or transacts business, or the Court of Appeals of the District of Columbia, for the enforcement of such order and for appropriate tem-

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porary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its

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member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(g) Any person aggrieved by an order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts busi-

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ness, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified

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by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (f), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying, or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(h) The commencement of proceedings under subsection (f) or (g) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(i) When granting appropriate temporary relief or restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

(j) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

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SEC. 11. The several District Courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice affecting commerce; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, but solely at the request of the National Labor Relations Board, to institute proceedings in equity to prevent and restrain any such unfair labor practice, in the judicial district wherein such unfair labor practice occurred or wherein the person complained of resides or transacts business. Such proceedings may be by way of petition setting forth the case and praying that such violation be enjoined and that such affirmative action, including restitution, be required as will effectuate the policies of this Act. When such person shall have been duly notified of such petition the court shall proceed, as soon as may

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be, to the hearings and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

ARBITRATION

SEC. 12. (a) The Board shall have power to act and to appoint any person, agent, or agency to act as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the

Board or its appointees. A provision in a written contract or a written agreement to submit to the arbitration of the Board or its appointees, when accepted by the Board after the dispute has arisen, shall be valid and irrevocable as to the parties to the agreement, save upon such grounds as exist at law or in equity for the revocation of any contract. If any party fails, neglects, or refuses to perform under such contract or submission, the Board, its agents or appointees, may nevertheless, in the discretion of the Board, proceed to hear the case ex parte, and the Board, its agents or appointees, shall have the power to issue an award applicable to the submitting parties.

(b) The Board shall make and publish, pursuant to section 6 (a), rules for the conduct of arbitrations, and an agreement to submit to the arbitration of the Board, or its appointees or its agents, shall be deemed consent to the proceeding being conducted in accordance with such rules then obtaining unless otherwise specified in the arbitration contract or submission. An agreement to submit to the Board shall authorize the Board to appoint agents to take evidence, and in the discretion of the Board, to render a decision in the name of the Board on the findings thus presented, unless otherwise specified in the agreement. The Board may, however, in its discretion, render a decision on testimony taken before its agents.

(c) In any case in which an award has been made, the Board shall file the award in the clerk's office of the United States District Court that has been agreed upon by the parties, or, in default of such agreement, that of the district wherein the labor dispute arose or the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award on the grounds hereinafter set forth shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment in accordance with the terms

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of the award: *Provided*, That no employee individually, and no group of employees collectively, shall be compelled to render labor or services without their consent.

(d) A petition for the impeachment of any award may be filed not more than ten days after the communication of notice of the filing of the award to the submitting parties. Notice of filing of such petition shall be served personally or sent by registered mail to each submitting party. The petition shall be sustained by the court only on one or more of the following grounds:

1. That the proceedings were not substantially in conformity with the provisions of the arbitration agreement or rules adopted for the conduct of the arbitration.

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2. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the award practiced fraud or corruption which affected the result: *Provided*, That partianship known, or which by the exercise of due care should have been known, by a party prior to the arbitration proceeding, shall not constitute fraud of which he may avail himself within the meaning of this section.

(e) The court shall not set aside an award on the ground that it is invalid for uncertainty. In such case the court shall suspend action pending its resubmission of said award to the Board for interpretation.

(f) Where there was an evident material miscalculation of figures, or an evident material mistake in the description of any person, thing, or property referred to in the award, or where the arbitrators have awarded on a matter not submitted to them, unless it is a matter affecting the merits of the decision on the matters submitted or where the award is imperfect in the matter of form not affecting the matter of the controversy, the court shall modify and correct the award so as to effect the intent thereof and promote justice between the parties, and thereupon shall enter judgment in accordance with subsection (c).

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(g) The court shall construe every award with a view of favoring its validity. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but that a part of the award is valid, the court shall nevertheless enter judgment upon such part or parts of the award as are valid unless such part or parts are inseparable from the remainder of the award, in which case the entire award shall be vacated.

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(h) If the petition for impeachment of the award is not sustained, the court shall enter judgment in accordance with the terms of the award, and in accordance with subsection (c). Where a petition for the impeachment of an award is granted, the award shall be vacated, and the court shall remand the arbitration to the Board, which may, in its discretion, accept the case for resubmission to arbitration in accordance with the terms of the original agreement or with such modifications as the Board deems fit, or it may refuse to take any further action reagrding its.

INVESTIGATORY POWERS

SEC. 13. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9, section 10, and section 12 (in any arbitration affecting commerce)—

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(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, and the Supreme Court of the District of Columbia,

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upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question;

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and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The veri-

fied return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 14. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of

not more than $5,000 or by imprisonment for not more than one year, or both.

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LIMITATIONS

SEC. 15. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 16. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall apply.

SEC. 17. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of

such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 18. This Act may be cited as the "National Labor Relations Act."

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LABOR DISPUTES ACT

HEARINGS

BEFORE THE

COMMITTEE ON LABOR
HOUSE OF REPRESENTATIVES

SEVENTY-FOURTH CONGRESS

FIRST SESSION

ON

H. R. 6288

MARCH 13, 14, 19, 20, 28, AND APRIL 3 AND 4, 1935

UNITED STATES
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LABOR DISPUTES ACT

WEDNESDAY, MARCH 13, 1935

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

The committee met at 10 a. m., Hon. William P. Connery, Jr. (chairman), presiding.

The CHAIRMAN. The committee will come to order. The other members will be in shortly. We do not want to lose any time, so the Senator can have all of the time that he wants.

The bill that is before us this morning that these hearings are being held on, are H. R. 6288, the Connery bill in the House, which is exactly similar to the bill which Senator Wagner previously introduced in the Senate.

(The bill under consideration is as follows:)

[H. R. 6288, 74th Cong., 1st sess.]

A BILL To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DECLARATION OF POLICY

SECTION 1. Equality of bargaining power between employers and employees is not attained when the organization of employers in the corporate and other forms of ownership association is not balanced by the free exercise by employees of the right to bargain collectively through representatives of their own choosing. Experience has proved that in the absence of such equality the resultant failure to maintain equilibrium between the rate of wages and the rate of industrial expansion impairs economic stability and aggravates recurrent depressions, with consequent detriment to the general welfare and to the free flow of commerce. Denials of the right to bargain collectively lead also to strikes and other manifestations of economic strife, which create further obstacles to the free flow of commerce.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or their mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or

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any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, or hours of employment.

(6) The term "commerce" means trade or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or abstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive order of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the "National Labor Relations Board (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint such employees, and, without regard for the provisions of the civil-service laws or the Classification Act of 1923, as amended, appoint and fix the compensation of an executive secretary, assistant executive secretaries, and such attorneys, special experts, examiners, and regional directors, as it may from time to time find necessary for the proper performance of its duties and as may be from time

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to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board at their present grades and salaries, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

(b) The Board shall have authority and is directed to study the activities of such boards and agencies as have been or may be hereafter established by agreement, code, or law to deal with labor disputes, and to receive from such boards reports of their activities.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the majority of the employees in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

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REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing.

(b) The Board shall decide whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the names or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (d) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (f) or 10 (g), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise, except as provided in section 11.

(b) The Board may, in its discretion, defer in exercise of jurisdiction over any such unfair labor practice in any case where there is another means of prevention provided for by agreement, code, law, or otherwise, which has not been utilized. But in any case where the Board has so deferred, the Board may at any time thereafter institute proceedings under this Act in order to assure the effectuation of the policy of this Act and the development of a uniform body of administrative interpretation and practice with respect to unfair labor practices as defined herein.

(c) Whenever there is a charge or the Board shall have reason to believe that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than three days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer and to appear in person or otherwise and give testimony at the place and time fixed in the complaint, and to invoke the compulsory process of the Board in summoning witnesses in its behalf. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(d) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named

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in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including restitution, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If, upon all the testimony taken, the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dissolving the said complaint.

(e) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(f) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States within any circuit wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, or the Court of Appeals of the District of Columbia, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(g) Any person aggrieved by an order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (f), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying, or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

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(h) The commencement of proceedings under subsection (f) or (g) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(i) When granting appropriate temporary relief or restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the act entitled "An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

(j) Petitions filed under this act shall be heard expeditiously, and if possible within 10 days after they have been docketed.

SEC. 11. The several District Courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice affecting commerce; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, but solely at the request of the National Labor Relations Board, to institute proceedings in equity to prevent and restrain any such unfair labor practice, in the judicial district wherein such unfair labor practice occurred or wherein the person complained of resides or transacts business. Such proceedings may be by way of petition setting forth the case and praying that such violation be enjoined and that such affirmative action, including restitution, be required as will effectuate the policies of this act. When such person shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearings and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

ARBITRATION

SEC. 12. (a) The Board shall have power to act and to appoint any person, agent, or agency to act as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the Board or its appointees. A provision in a written contract or a written agreement to submit to the arbitration of the Board or is appointees, when accepted by the Board after the dispute has arisen, shall be valid and irrevocable as to the parties to the agreement, save upon such grounds as exist at law or in equity for the revocation of any contract. If any party fails, neglects, or refuses to perform under such contract or submission, the Board, its agents or appointees, may nevertheless, in the discretion of the Board, proceed to hear the case ex parte, and the Board, its agents or appointees, shall have the power to issue and award applicable to the submitting parties.

(b) The Board shall make and publish, pursuant to section 6 (a), rules for the conduct of arbitrations, and an agreement to submit to the arbitration of the Board, or its appointees or its agents, shall be deemed consent to the proceeding being conduced in accordance with such rules then obtaining unless otherwise specified in the arbitration contract or submission. An agreement to submit to the Board shall authorize the Board to appoint agents to take evidence, and in the discretion of the Board, to render a decision in the name of the Board on the findings thus presented, unless otherwise specified in the agreement. The Board may, however, in its discretion, render a decision on testimony taken before its agents.

(c) In any case in which an award has been made, the Board shall file the award in the clerk's office of the United States District Court that has been agreed upon by the parties, or, in default of such agreement, that of the district wherein the labor dispute arose or the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award on the grounds hereinafter set forth shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment in accordance with the terms of the award: *Provided*, That no employee individually, and no group of employees collectively, shall be compelled to render labor or services without their consent.

(d) A petition for the impeachment of any award may be filed not more than ten days after the communication of notice of the filing of the award to the submitting parties. Notice of filing of such petition shall be served personally or sent by registered mail to each submitting party. The petition shall be sustained by the court only on one or more of the following grounds:

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1. That the proceedings were not substantially in conformity with the provisions of the arbitration agreement or rules adopted for the conduct of the arbitration.

2. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the award practiced fraud or corruption which affected the result: *Provided*, That partisanship known, or which by the exercise of due care should have been known, by a party prior to the arbitration proceeding, shall not constitute fraud of which he may avail himself within the meaning of this section.

(e) The court shall not set aside an award on the ground that it is invalid for uncertainty. In such case the court shall suspend action pending its resubmission of said award to the Board for interpretation.

(f) Where there was an evident material miscalculation of figures, or an evident material mistake in the description of any person, thing, or property referred to in the award, or where the arbitrators have awarded on a matter not submitted to them, unless it is a matter affecting the merits of the decision on the matters submitted or where the award is imperfect in the matter of form not affecting the matter of the controversy, the court shall modify and correct the award so as to effect the intent thereof and promote justice between the parties, and thereupon shall enter judgment in accordance with subsection (c).

(g) The court shall construe every award with a view of favoring its validity. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but that a part of the award is valid, the court shall nevertheless enter judgment upon such part or parts of the award as are valid unless such part or parts are inseparable from the remainder of the award, in which case the entire award shall be vacated.

(h) If the petition for impeachment of the award is not sustained, the court shall enter judgment in accordance with the terms of the award, and in accordance with subsection (c). Where a petition for the impeachment of an award is granted, the award shall be vacated, and the court shall remand the arbitration to the Board, which may, in its discretion, accept the case for resubmission to arbitration in accordance with the terms of the original agreement or with such modifications as the Board deems fit, or it may refuse to take any further action regarding it.

INVESTIGATORY POWERS

SEC. 13. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9, section 10, and section 12 (in any arbitration affecting commerce)—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, and the Supreme Court of the District of Columbia, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

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(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be the proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witness summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 14. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 15. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 16. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (1) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (1) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall apply.

SEC. 17. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 18. This Act may be cited as the "National Labor Relations Act."

The CHAIRMAN. First of all, before the Senator starts, I want to say that I speak for this committee when I say that we feel highly honored in having such a good friend of labor, and such a distinguished Senator as Senator Wagner with us this morning.

STATEMENT OF HON. ROBERT F. WAGNER, SENATOR FROM NEW YORK

Senator WAGNER. I am going to say, Mr. Chairman, that I hope the committee will bear with me if I am a little long, because I hope to make a comprehensive statement with reference to the labor-

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relations bill pending here, because I regard it as exceedingly important. The national labor-relations bill, which is the Wagner bill, does not present a single novel principle for the consideration of Congress. It is designed to further the equal balance of opportunity among all groups that we have always attempted to preserve despite the technological forces driving us toward excessive concentration of power and wealth.

The first of these attempts that has contemporary significance was the Sherman Antitrust Law, enacted in 1890 to protect the laborer, the small business man and the consumer from the dangers of unregulated monopolies of capital. The failure of that noble undertaking demonstrates the impossibility of trying to swim against the currents of economic development. The early dissolution of the Standard Oil Co. was more spectacular than realistic. The rule of reason enunciated in that famous case soon came to mean that the courts found little reason in the antitrust laws. During the flowering of American enterprise between the World War and 1930, 40.7 percent of the net income earned by all of the nonfinancial corporations in the country wen to the 200 largest. The annual number of recorded mergers mounted from 89 in 1919 to 221 in 1928, while the number of concerns involved in these mergers more than tripled vearly. The right of business to combine was virtually unchallenged.

One may rake the debates preceding the passage of the Sherman Act with a fine-toothed comb and not find any indications that the law might be used to harass and impede the laborers and consumers it was designed to protect. But that has been the paradoxical fate of labor, and also of the vast majority of consumers whose share of the national income depends upon the reward they receive as employees.

The famous *Danbury Hatters case* (208 U. S. 274 (1908)), was the harbinger of future events when it declared unequivocally that the antitrust laws applied to labor as well as to capital. A long procession of cases following this decision moved Congress in 1914 to write the Clayton Act, declaring that labor organizations should be allowed to pursue their lawful and legitimate objectives, and that no injunction should issue in a dispute between employers and employees except when necessary to prevent irreparable injury.

Undaunted by this clear pronouncement, the Supreme Court in *Duplex Printing Press Co.* v. *Deering* (254 U. S. 443 (1921)), upheld an injunction against a secondary boycott by employees. Mr. Justice Pitney wrote:

> In determining the right to an injunction under that (the Clayton Act) and the Sherman Act, it is of minor consequence whether either kind of boycott is lawful or unlawful under common law or under the statutes of particular States. Those acts, passed in the exercise of the power of Congress to regulate commerce among the States, are of paramount authority, and their prohibitions must be given full effect irrespective of whether the things prohibited are lawful or unlawful under common law or under local statutes.

Thus the learned justice reasoned that Congress, in excluding from the prohibition of the antitrust laws all lawful acts of labor organizations, had intended to exclude only those acts that were lawful under the antitrust laws.

Mr. Justice Pitney had another hurdle to overcome, for section 20 of the Clayton Act prohibited injunctions in disputes between em-

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ployers and employees. But he decided that the statute referred only to an employer and his employees, and therefore did not cover a secondary boycott. Mr. Justice Brandeis, with a keener perception of economic realities, was joined in dissent by Mr. Justice Holmes and Mr. Justice Clarke.

Soon after this the court placed the crown upon this body of judicial error. In *American Steel Foundries* v. *The Tri-City Central Trade Council* (257 U. S. 184 (1921)) it declared that the Clayton Act "introduced no new principle into the equity jurisprudence of those courts. It is merely declaratory of what was the best practice always."

While the courts were extending Federal power over labor disputes in this manner they were deciding other cases affecting the substantive rights of employees. In the *Tri-City case* (supra), an employee organization was denied the right to place more than one peaceful picket near the entrance to a building, and the court added that "the name 'picket' indicated a militant purpose, inconsistent with peaceful persuasion." In *Truax* v. *Corrigan* (257 U. S. 312 (1912)) an Arizona statute substantially similar to section 20 of the Clayton Act was declared unconstitutional.

The high-water mark of the adverse flood came in *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Association* (275 U. S. 37 (1927)). In this case a small group of craftsmen had refused to work upon stone which had been shipped into the State from quarries in other States where nonunion labor was employed. The way for declaring the legality of the peaceful secondary boycott had been blazed by high courts in New York and California (*Bossert* v. *Dhuy*, 221 N. Y. 342 (1917) and *Pierce* v. *Stablemen's Union*, 156 Cal. 70 (1909)). But the Supreme Court found a violation of the antitrust laws and sustained an injunction. The voice of Mr. Justice Brandeis was heard in protest:

> The Sherman Law was held, in *United States* v. *The United States Steel Corporation*, to permit capitalists to combine in a single corporation 50 percent of the steel industry of the United States, dominating the trade through its vast resources. The Sherman Law was held in *United States* v. *The United Shoe Machinery Co.* to permit competitors to combine in another corporation practically the whole shoe machinery industry of the country, necessarily giving a position of dominance over shoe manufacturing in America. It would, indeed, be strange if Congress had by the same action willed to deny to members of a small craft of workmen the right to cooperate in simply refraining from work when that course was the only means of self-protection against a combination of militant and powerful employers.

While the effect of court decision was to turn against the worker and the consumer a statute which was designed for their benefit, other cases were sweeping aside the direct attempts of Congress and of the States to benefit these groups. In *Adair* v. *United States* (208 U. S. 161 (1907)), over the dissents of Mr. Justice Holmes and Mr. Justice McKenna, and in *Coppage* v. *Kansas* (236 U. S. 1 (1914)), with Mr. Justice Holmes, Mr. Justice Day, and the then Associate Justice Hughes dissenting, statutes making it a crime to discharge men for union membership were declared unconstitutional.

I have engaged in this summary discussion of legislation and decided cases because they present in brief and bold outline the full sweep of events. But they are largely the shadow of profound social and economic developments, and it is by turning to statistics that we

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get at the substance. What do the figures reveal regarding our progress in making opportunity available to all?

When the World War ended, according to the unrivaled studies of Prof. W. I. King, 15,000,000 American families were living in poverty, and 86 percent of our wage earners were receiving incomes below the level of health and decency. At the same time one-thirtieth of the people were earning one-tenth of the total national income.

During the so-called "golden era" that extended until 1929, there were stupendous increases in the total wealth of the Nation. But a study published last year by the Brookings Institution entitled "America's Capacity to Consume", indicates that the paradox of poverty and plenty was never more glaring. In 1929, 6,000,000 families, or more than 21 percent of the total population, had incomes of less than $1,000 per year. About 12,000,000 families, or more than 42 percent of the total, earned less than $1,500 yearly. Nearly 20,000,000 families, constituting 71 percent of our people, received less than $2,500 each year. At the same time, in the highest income bracket, one-tenth of 1 percent of American families were earning as much as the 42 percent at the bottom. Thus, Recent Social Trends, published in 1933 by President Hoover's committee, states:

> In spite of the deliberate attempts to promote the wider diffusion of wealth, there is little evidence that any change in the distribution of wealth has taken place in the country during the past several decades.

I am not pleading for any special group. It is well recognized today that the failure to spread adequate purchasing power among the vast masses of the consuming public disrupts the continuity of business operations, and causes everyone to suffer. The piling up of excess capital reserves and plant capacities is a dead weight upon the whole economic structure. This is abundantly proved by the painstaking statistical studies of F. C. Mills. In Economic Tendencies in the United States (1932), he shows that between 1922 and 1929 the development of productive capacities was four times as rapid as the rise in real wages. An unbalanced economy, fraught with certain disaster to every interest, was implicit in these undeniable developments.

And in 1929 the disaster came. But neither the social injustice of making those at the bottom of the economic ladder suffer first and suffer most, nor the preachments of economists that we could never recover by further curtailments in purchasing power, had the slightest effect. Last month the Research and Planning Division of the National Recovery Administration released its remarkable report. This report shows that while the depression forced the index of manufacturing pay rolls, in the second quarter of 1933, down to 41.3 percent of the 1926 level, and brought our national income down to 57.3 percent of that level, the index of total dividend and interest payments stood as high as 142.6 percent of the 1926 level in early 1933. So long as these conditions persisted, there seemed no way to lift ourselves out of the bottomless pit of depression.

Finally, about 2 years ago, we set forth upon a new program, openly and completely reversing our earlier policies. Industrial cooperation was given sanction in order to limit the evils of destructive competition. Employees were guaranteed protection in their cooperative

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efforts, in order that they might help the Government to insure a sufficient flow of purchasing power through adequate wages.

At the present time, there is controversy as to whether industrial cooperation is a wise policy. There are some who plead for the strict enforcement of the antitrust laws. There are others who argue with equal force that concerted action is made necessary because of technological conditions, and that the real problem is to make such unity serve social ends. But there is no one who denies that industrial cooperation has increased enormously and that the trade-association movement has blanketed the entire country.

Still less open to question is the proposition that workers also should be allowed to cooperate fully. If impartial students agreed, and Congress recognized, that full freedom of association and self-organization among workers was desirable even when the antitrust laws were a policy, if not an actuality, how much more necessary this freedom is today, when the antitrust laws have been in part suspended. The governmental policy of fixing minimum wages and maximum hours is not a definitive solution. It is merely the foundation upon which can be built the mutual endeavors of a revived industry and a rehabilitated labor. This process of economic self-rule must fail unless every group is equally well represented. In order that the strong may not take advantage of the weak, every group must be equally strong. Not only is this common sense, but it is also in line with the philosophy of checks and balances that colors our political thinking. It is in accord with modern democratic concepts which reject the merger of all group interests into a totalitarian state. It is necessary to avert the advent of fascistic devices. The recovery program did not give employees any rights of organization to which they were not entitled before the program began. But the inauguration of the program has made the protection of these rights imperative.

It is a matter of common knowledge that the principles of section 7 (a) of the Recovery Act have been flaunted at the very crucial spots where their observance is most essential. This does not inflict injuries upon one group alone. It is unjust to employees who have seen what was handed to them as a new charter being treated as a meaningless gesture. It is unfair to the vast majority of employers who are anxious and willing to obey the law and who are faced with the destructive competition of those who seek to gain advantage by disobeying it. It is disastrous to every economic interest, because it is a main cause for the reappearance of those very tendencies which brought collapse in 1929 and which will certainly bring it again if they are not checked.

Again we find a tremendous disparity between wages and return upon investment. The Research and Planning Division reports shows that by the last quarter of 1934 manufacturing pay rolls had risen only to 59 percent of the 1926 level and our natural income had mounted only to 67.6 percent of that level, while dividend and interest payments were no less than 148.9 percent of the 1926 figure. As a corollary to this development, the past year has witnessed no appreciable increase in the real wage of the individual worker employed full time, no substantial reductions in hours of work, and no decrease in the ranks of the jobless. With hardly less than 10,000,000 people

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now unemployed, the consequences of not bringing corrective forces into play are truly alarming.

Another major characteristic of the past 2 years has been the rising tide of industrial discontent. Of the 812,137 workers who were involved in strikes during 1933, over 77 percent walked out during the second half of the year. In 1934 the number rose to 1,277,344. Within a span of 24 months, over 32,000,000 man-days were lost because of labor controversies.

No one can examine the facts without concluding that the overwhelming preponderance of this tragic waste of man power was engendered by the failure to observe the basic principles of section 7 (a) of the Recovery Act. During the second half of last year and the first month of 1935 controversies embracing 1,333,041 workers came before the regional labor boards. Certainly this was a large enough volume for sampling purposes. Of the 3,655 new cases received by the Board during the period, violations of section 7 (a) were involved in 3,230 of them, or about 74 percent.

Our alternatives are clear. If we allow section 7 (a) to languish, we shall be confronted by intermittent periods of peace at the price of economic liberty, dangerous industrial warfare, and dire depressions. On the other hand, if we clarify that law and bolster it by adequate enforcement agencies, we shall do much to round out the program for a balanced economic system founded upon fair dealing and common business sense. The latter course is charted by the national labor relations bill before the committee.

The main provisions of the present bill define four unfair labor practices and provide suitable means of preventing them. Let us examine how well grounded these prohibitions are in established congressional policy, to what specific evils they are addressed and what their implications are. I wish to state at the outset that this bill is an entirely new draft, and that it must not be interpreted in the light of whether or not it contains provisions that were in the bills upon the same subject before Congress last year.

The first unfair labor practice in substance forbids an employer to interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

This language follows practically verbatim the familiar principles already embedded in our law by section 2 of the Railway Labor Act of 1926, section 2 of the Norris-La Guardia Act, section 77 (p) and (q) of the 1933 amendments to the Bankruptcy Act, section 7 (a) of the National Industrial Recovery Act, and section 7 (e) of the act creating the office of the Federal Coordinator of Transportation.

Long experience has proved, however, that courts and administrative agencies have difficulties in enforcing these general declarations of right in the absence of greater statutory particularity. Therefore, without in any way placing limitations upon the broadest reasonable interpretation of its omnibus guaranty of freedom, the bill refers in greater detail to a few of the practices which have proved the most fertile sources for evading or obstructing the purpose of the law.

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Thus the third unfair labor practice makes it illegal for an employer, by discrimination in regard to hire or tenure of employment, to encourage or discourage membership in any labor organization.

This provision is merely a logical and imperative extension of that section of the Norris-La Guardia Act which makes the yellow-dog contract unenforceable in the Federal courts. If freedom of organization is to be preserved, employees must have more than the mere knowledge that the courts will not be used to confirm injustice. They need protection most in those cases where the employer is strong enough to impress his will without the aid of the law. And it is perfectly obvious that unfair pressure may be exercised by discrimination in terms of employment as well as by actual discharge.

The fourth unfair labor practice, forbidding discharge or discrimination because an employee has filed charges or given testimony under this measure, is self-explanatory.

The second unfair labor practice makes it unlawful for an employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. It is provided, however, that the National Labor Relations Board may, in its discretion, permit employees to confer with the management during working hours without loss of time or pay.

The intent here is to bring about in industry generally the same conditions which Congress decreed for the railways and businesses under trusteeship by the 1933 amendments to the Bankruptcy Act, the act creating the office of the Federal Coordinator of Transportation, and the 1934 amendments to the Railway Labor Act. If, unlike these other laws, the present bill uses the term " company-dominated union " instead of " company union ", it is simply to make it clear that there is no intent to outlaw the so-called " company union " when that term is used to include an independent and unhampered organization of employees confined by their own volition to the limits of one plant.

The development of the company-dominated union has been one of the great obstacles to genuine freedom of self-organization. It is extremely significant that these spurious unions have sprouted most prolifically in the form of various employee representation plans devised after the enactment of the law designed to insure that very freedom. Over 69 percent of the plans now in existence have been inaugurated since the passage of the Recovery Act. It is worthy of note also that these plans are most prevalent in the largest plants. This means that in the very instances where the bargaining power of the employer is strongest the worker is least free to attempt to improve his position by unrestricted affiliation with others of his kind.

In fact, the most common characteristic of the company-dominated union is that the employer to which it is subject does not permit his workers to band together with others who are not serving the same company. Thus, workers may be prevented from dealing intelligently and effectively with problems of wages or hours that are regional or even national in scope. Certainly the employer who is enlisted in a powerful trade association, and who seeks to deny equivalent privileges to his employees, is acting unfairly and not in the public interest.

Another defect of the company dominated union is that, sometimes by express provision, but more frequently by imponderable economic pressure, the employees' selection of representatives is lim-

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ited to those who work for the same company. While a worker may be master of his tools, he seldom possesses the general knowledge of business conditions necessary to deal upon a parity with employers concerning terms of work. Nor can a man whose very livelihood depends upon maintaining the favor of his employer be outspoken and independent in representing the interest of employees. No just employer should want to impose such restrictions when he utilizes trained experts in personnel management, and when he certainly would not countenance that these experts should be answerable to anyone save himself.

The company-dominated union is frequently supported, in part or in whole, by the employer. I cannot comprehend how people can rise to the defense of a practice so contrary to American principles as one which permits the advocates of one party to be paid by the other. Collective bargaining becomes a sham when the employer sits on both sides of the table or pulls the strings behind the spokesman of those with whom he is dealing.

I have discussed the most common practices in connection with the company-dominated union. But interference may exist in the absence of any or all of these practices. It may consist of employer participation in the internal management or in the formation of the constitution or bylaws of a labor organization. Acts which would not constitute interference where separated parties are concerned may become interference when one party has the unique dependence attached to its source of livelihood. The question is entirely one of fact and turns upon whether or not the employee organization is entirely the agency of the workers. Employers may, of course, confer with the union; but they should not participate in its deliberations as an organic entity. The organization itself should be independent of the employer-employee relationship.

Since this bill is so permeated with principles of freedom, I have been astounded to encounter the wide-spread propaganda that it imposes new forms of restraints. It does not encourage a national-union monopoly. It does not manifest preference for craft or industrial unionism. As I have said, it does not even outlaw the company union, if by that term is meant solely the free and independent organization of workers who desire to confine their cooperative actions to a single company. Nor does it prevent employers from contributing to group welfare, recreation, pensions, or other benefits when such contributions are not used as a covert means of discrimination against workers who belong to organizations of their own choosing. But to argue that freedom of organization for the worker must embrace the right to select a form of organization that is not free is a contradiction in terms. There cannot be freedom in an atmosphere of bondage.

Furthermore, the terms of the bill do not compel or even encourage a man to join any union. Nothing could be more false than the charge that a gigantic closed shop would be forced upon industry. The much-discussed closed-shop proviso merely states that nothing in any Federal law shall be held to illegalize the consummation of closed-shop agreements when they are sought by the majority of the employees in the unit to be covered by them when made. This insertion is necessary to prevent repetition of these mistaken interpreta-

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tions which have held that Congress intended to outlaw the closed shop when it enacted section 7 (a) of the Recovery Act.

I hold no brief for or against the closed shop. But there are many who believe that it is a device which at times may be necessary to advance and preserve the living standards of employees. It is legal in New York, in Massachusetts, and in many other States. Upon this subject no sufficient reason has been advanced why Congress should change the status quo.

While the bill explicitly states the right of employees to organize, their unification will prove of little value if it is to be used solely for Saturday-night dances and Sunday-afternoon picnics. Therefore, while the bill does not state specifically the duty of an employer to recognize and bargain collectively with the representatives of his employees, because of the difficulty of setting forth this matter precisely in statutory language, such a duty is clearly implicit in the bill. To attempt to deal with his men otherwise than through representatives they have named for such purposes would be the clearest interference with the right to bargain collectively. As the National Labor Relations Board said so well in the *Houde Engineering Corporation case*, decided August 30, 1934:

> The right of employees to bargain collectively implies a duty on the part of the employer to bargain with their representatives. Without this duty to bargain, the right to bargain would be sterile; and Congress did not intend for the right to be sterile * * * the incontestably sound principle is that the employer is obligated by the statute to negotiate in good faith with his employees' representatives, to match their proposals, and to make every reasonable effort to reach an agreement.

All collective bargaining is simply a means to an end. That end is not the mere exchange of pleasantries between employer and employee, but rather the making of agreements which will stabilize employment conditions and set fair working standards. Students of industrial relations are in almost unanimous accord that it is practically impossible to apply two or more sets of agreements to one unit of workers at the same time, or to apply the terms of one agreement to only a portion of the workers in a single unit. For these reasons collective bargaining can be really effective only when workers are sufficiently solidified in their interests to make one agreement covering all. This is possible only by means of majority rule.

Majority rule, as set forth in the present bill, provides that—

> representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

This makes it clear that the guaranty of the right of employees to bargain collectively through representatives of their own choosing must not be misapplied so as to permit employers to interfere with the practical effectuation of that right by bargaining with individuals or minority groups in their own behalf after representatives have been picked by the majority to represent all.

At the same time, majority rule does not even imply that any employee can be forced to join a union except through the traditional method of a closed-shop agreement with the employer. And since

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the bill specifically prevents discrimination against anyone either for belonging or for not belonging to a union, the majority will be quite powerless to make an agreement more favorable to themselves than to the minority who remain without. In addition, the bill preserves at all times the right of any individual or minority group to present grievances to their employer through representatives of their own choosing.

Those who contest majority rule as thus circumscribed are in truth avoiding the duty to bargain collectively by creating conditions which make collective agreements impossible. The National Labor Relations Board laid the issue bare in the *Houde case*, when it said:

> It seems clear that the company's policy of dealing first with one group and then with the other resulted, whether intentionally or not, in defeating the object of the statute. In the first place, the company's policy inevitably produced a certain amount of rivalry, suspicion, and friction between the leaders of the committees. * * * Secondly, the company's policy, by enabling it to favor one organization at the expense of the other, and thus to check at will the growth of either organization, was calculated to confuse the employees, to make them uncertain which organization they should from time to time adhere to, and to maintain a permanent and artificial division in the ranks.

Proceeding to discuss the relative merits of so-called " proportional representation ", the Board said:

> This vision of an employer dealing with a divided committee and calling in individual employees to assist the company in arriving at a decision is certainly far from what section 7 (a) must have contemplated in guaranteeing the right of collective bargaining. But whether or not the workers' representation by a composite committee would weaken their voice and confuse their counsels in negotiation with the employer, in the end whatever collective agreement might be reached would have to be satisfactory to the majority within the committee. Hence the majority representatives would still control, and the only difference between this and the traditional method of bargaining with the majority alone would be that the suggestions of the minority would be advanced in the presence of the majority. The employer would ordinarily gain nothing from this arrangement if the two groups were united; and if they were not united, he would gain only what he has no right to ask for, namely, dissention and rivalry within the ranks of the collective-bargaining agency. He could by lawful means ascertain the views of particular employees regarding proposals which are under consideration, but he would have no right to insist that the representatives of the majority should, in the absence of any agreement, advance their proposals only in conjunction with some other group.

This keen analysis by the Board did not carry it afield from trodden paths. The principle of majority rule has been applied regularly by governmental agencies and recognized repeatedly by laws of Congress. It was followed by the National War Labor Board created by President Wilson in the spring of 1918. It has been applied consistently by the Railway Labor Board created by the Transportation Act of 1920. The 1934 amendments to the Railway Labor Act of 1934 provided for it. On February 1, 1934, the President issued an Executive order authorizing the National Labor Board to hold elections, and provided substantially that those elected by " at least a majority of the employees voting " should " represent all the employees eligible to participate in such an election for the purpose of collective bargaining." Public Resolution No. 44, approved in June 1934, in that it provided for elections, must have contemplated majority rule. Even those employers who set up employee representation plans provide consistently that representatives for collective bargaining shall be elected by majority vote.

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I might interpolate right there that, in a case in which the company union controlled, a protest was received from the National Labor Relations Board, because the minority of a particular group wanted also to negotiate with the employers. In other words, the majority rule is all right when a company union is established, but not when a legitimate union has the majority vote.

And the rule prevails in the conduct of business. The platform adopted by the Congress of American Industry and the National Association of Manufacturers on December 5 and 6, 1934, who, by the way, oppose the majority rule for legitimate unions, provides:

> Under appropriate safeguards the approved competitive practices and prohibitions submitted by the properly defined majority of a group, trade, or industry should be binding upon the minority.

Freedom for the individual worker does not mean that he should be free from the orderly process of determining questions which prevail in business and in public affairs. That kind of freedom is the trade name for exploitation.

To determine the representatives of employees in case of controversy, the bill authorizes the National Labor Relations Board or its agents to hold election or to utilize any other appropriate method. Such determination by an impartial governmental body is the first prerequisite to establishing the foundation upon which collective bargaining must rest.

Having outlined the main substantive provisions of the national labor relations bill, I want to direct attention to one criticism that has been leveled against it. It has been claimed that in order to be fair, the bill should prohibit employees and labor organizations, as well as employers, from coercing employees in their choice of representatives. This argument rests upon a misconception of the needs which give rise to this measure. Violence and intimidation by either employers or workers are adequately prevented by the common law and do not require special treatment. This measure deals with the subtler forms of economic pressure. Such pressure cannot be exerted by employees upon one another to an extent justifying congressional action. But it can be directed against a worker by an employer who controls his job. It is this latter evil which has grown to a magnitude requiring a new public remedy. Furthermore, many courts have defined the term "coercion" to embrace all strikes or picketing, no matter how justifiable. They have drawn a line between legal and illegal coercion. Thus to prohibit employees from coercing their own side would not merely outlaw the undesirable action which the word connotes to us but would make the result reach to the loudly condemned *Hitchman Coal case* (245 U. S. 229) (1917), the law of the land. It would defeat the very freedom of self-organization which the bill is designed to protect. All legislation strives not for an abstract or paper equality but for conditions which will produce actual equality in the light of concrete facts.

At present the National Labor Relations Board suffers most seriously from lack of adequate enforcement powers. Of course, it may refer its decisions to the National Recovery Administration, and that agency is backed by powerful sanctions. But it is well known that these sanctions have scarcely been utilized, because the entire drift of N. R. A. has been toward self-government and self-enforcement by

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industry through the code mechanism. This may well be an admirable method of preserving canons of fair competition that have been not only approved but actually proposed by the majority of the businesses to whom they apply. But it is totally ineffective in maintaining the guaranties of section 7 (a) which was written by Congress and which become a burning issue in those very cases when its validity is challenged by the powerful. Definite mandates of Congress must be enforced by the Government.

Secondly, the Board may refer its decisions to the Department of Justice. But since the Board has no power of subpena or investigation except in connection with elections, the records which it builds up are based in most cases upon the testimony of complaints alone, supplemented at best by the testimony of such witnesses as the defendant voluntarily presents. This makes it necessary for the Department of Justice in any event to make further investigations before bringing suit. And if the Department brings suit at all, it must commence entirely in the courts, with the defendant having 30 days to answer, or moving to dismiss, or applying for a bill of particulars. Thus is defeated the very purpose of an administrative agency, which is to provide specialized treatment of the factual aspects of specialized controversies.

Thirdly, the present Board has been forced to hold that section 7 (a) applies only to codified industries. This not only deprives a vast segment of our workers of a protection which they should have, but it also enables some codified industries constantly to utilize the threat that they will abandon their codes if 7 (a) is enforced.

The almost complete break-down of law observance in crucial cases merely reflects these weaknesses in existent law. During the last half of 1934 the Labor Relations Board made 68 decisions requiring compliance. In 43 of these cases compliance was not obtained; 21 were referred to the Recovery Administration, there to await the ineffectual removal of some "blue eagle." In the 19 cases sent to the Department of Justice, only one has found its way into the courts.

In order to eradicate this evil the present bill creates an independent and permanent National Labor Relations Board, composed of three members, appointed by the President by and with the advice and consent of the Senate. To prevent unfair labor practices the board is given power to conduct investigations, to issue subpenas, and to frame cease-and-desist orders. Such orders, if disobeyed, are enforceable in the Federal courts, and any party aggrieved by a positive or negative order of the Board may secure appropriate court review. In contrast to the wide-spread charges that the Board is to be invested with extraordinary powers, the procedure outlined has become part and parcel of the functioning of such agencies as the Federal Trade Commission, the Interstate Commerce Commission, and many others.

A second stumbling block in the pathway of the Board has to do with the holding of election. Under public Resolution No. 44, passed last June, any attempt of the Board to hold an election may be contested at the outset in the Federal courts. As a result, the Board, during the last half year, has been able to conduct elections in only 2 cases out of 8. In every case where the company has

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refused consent to an election, the Board has been tied up so indefinitely that not a single controversy has yet been argued in any circuit court of appeals. When the Steel Code was renewed in May 1934, thus averting a great steel strike, it was with the express understanding that elections would be held promptly in the steel industry. But the steel board, after months of delay, has had no success in holding elections in the large plants.

The present bill cures this difficulty by providing that the Board may conduct elections without anterior court review. An election is nothing but an investigation, a factual determination of who are the representatives of employees. There is no more reason why this should be delayed than why an investigation by the Board as to whether there has been an unfair labor practice should be held up. But if the Board, after holding an election, gives it practical effect by ordering an employer to deal with representatives so chosen, the whole conduct of the election becomes part of the record reviewable in the courts, just the same as any other action of the Board upon which an order to refrain from an unfair labor practice is based. This provision insures full court review in any case where an election affects an employer in any substantial way. But it does not stoop to the folly of holding the Board up twice, once by court review before the election, and then by court review by the order based upon the election.

Another factor which has contributed mightily to the emasculation of the rights guaranteed by section 7 (a) has been the intrusion of a wide variety of independent industrial boards. At the present time there are 13 separate boards, exclusive of the National Labor Relations Board and the National Mediation Board, authorized to handle labor disputes, including 7 (a) cases. It is true that in most instances a right of appeal lies from a decision of some of these boards to the National Labor Relations Board. But the practical results of the existing set-up has rendered that right illusory. In addition, the National Labor Relations Board now has no jurisdiction over the factual findings of boards established pursuant to any industrial code, nor any power to reform their interpretations of the law. As there are now 103 codes which make some provision for the creation of such boards, there is great likelihood of a proliferation of independent agencies dealing with collective bargaining rights.

Of course, these independent boards like the National Labor Relations Board, have not sufficient power today to protect collective bargaining even if they wanted to. And certainly it would be very dubious policy to confer upon all of them the increased authority which is proposed for a single national board by this bill.

But that is not the main point. The entrustment of section 7 (a) or its equivalent to a variety of independent industrial boards is bad in principle. The very kernel of the industrial board idea is that each industry has special problems which require differentiated treatment. The boards are largely bipartisan, and live in an atmosphere of compromise, conciliation, and adaptation. This is perfectly suited to the settlement of disputes concerning hours and wages, where shifting scales are fitted to particular conditions. But it is unsuited to section 7 (a), which Congress intended for universal application, not universal modification. The practical effect of letting each in-

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dustry bargain and haggle about what section 7 (a) means is that the weakest groups who need its basic protection must receive the least.

For these reasons, the present bill gives the National Labor Relations Board exclusive jurisdiction to prevent unfair labor practices as defined in this bill. In connection with this work it may establish regional agencies to make primary investigations and findings for the guidance of the Board, and of course it may denominate existing industrial boards to act as such agencies. Where industrial boards and the like are operating under some other statute, such as section 7 (a) of the Recovery Act, the National Labor Relations Board may, in its discretion, defer action under this bill until the other boards have had opportunity to prove their effectiveness in protecting these fundamental rights of employees. But the National Labor Relations Board, by such deference, will not lose its power at any time to act in its own right to prevent unfair labor practices, and to speak with final authority where conflicts of law or administration exist. Only by the operation of a single unifying and coordinating administrative body can the law of Congress be kept true to its intent and receive respectful attention in the courts.

I cannot urge too strongly that the National Labor Relations Board shoud be maintained as an independent agency of the Government. There is nothing in the bill which interferes with the Conciliation Service of the Department of Labor, for that service performs a most useful function where it is now located. But there is no more reason why the Board should be connected with the Department of Labor than why the Federal Trade Commission should be attached to the Department of Commerce. For years lawyers and economists have pleaded for a dignified administrative tribunal, detached from any particular administration that happens to be in power, and entitled to deal quasi-judicially with issues with which the courts have neither the time nor the special facilities to cope. With such a tribunal in the offing, its integrity should be preserved.

The Board is empowered also to arbitrate labor disputes upon voluntary submission. But its awards shall be binding only upon parties who have agreed in advance, and there is not the slightest flavor of compulsory arbitration.

Finally, I desire to discuss the constitutional problems raised by this bill. There are two broad questions involved: First, does the regulation of the employer-employee relationship as herein provided violate due process of law; and, secondly, can Federal jurisdiction over this relationship be sustained under the commerce power?

The power of Congress to guarantee freedom of organization, to prohibit the company-dominated union, and to prevent employers from requiring membership or nonmembership in any union has been upheld completely in *Texas & New Orleans R. R. Co.* v. *Brotherhood* (281 U. S. 548 (1930))—by the way, a case which so many entirely overlook. This was a suit by a labor union to restrain the railroad from interfering with the right of its employees to self-organization and the designation of representatives, in violation of the Railway Labor Act of 1926. The decree of the lower court provided that the railway company should (1) completely disestablish its company union; (2) reinstate the brotherhood as representative until the employees, by secret ballot, should make a choice; (3) restore

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to service and to stated privileges certain employees who had been discharged for activities in behalf of the brotherhood. The Supreme Court, with Chief Justice Hughes writing for a unanimous court sustaining the decree, wrote:

> The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work * * * Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interference with freedom of choice.

Thus, the Supreme Court sustained a decree prohibiting in substance all except the last of the unfair practices listed in this bill, and it is particularly significant that this decree was based upon a law containing only the first of these practices.

Brushing aside the much criticized earlier cases that had declared the prohibition of the yellow-dog contract unconstitutional, Chief Justice Hughes said:

> The petitioners invoke the principle declared in *Adair* v. *United States* (208 U. S. 161), and *Coppage* v. *Kansas* (236 U. S. 1), but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers, but with the interference of the right of employees to have representatives of their own choosing. As the carriers subject to the act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds.

When we realize that this prevailing and unanimous opinion of the Chief Justice follows precisely the line of reasoning that he followed when dissenting in the *Coppage case*, and that the two cases are really identical in principle, we cannot doubht that *Coppage* v. *Kansas* and *Adair* v. *United States* have been overruled. Let me quote the reasoning of the present Chief Justice, then an Associate Justice, in the *Coppage case:*

> There is nothing in the statute now under consideration which prevents an employer from discharging one in his service at his will. The question now presented is, may an employer, as a condition of present or future employment, require an employee to agree that he will not exercise the privilege of becoming a member of a labor union, should he see fit to do so? In my opinion, the cases are entirely different, and the decision of the question controlled by different principles. The right to join labor unions is undisputed, and has been the subject of frequent affirmation in judicial opinions * * * the right to join them, as against coercive action to the contrary, may be the legitimate subject of protection in the exercise of the police authority of the States.

It is true that the Texas case involves the interests of railway workers, but the decision on the question of due process is equally applicable wherever congressional jurisdiction over interstate commerce can be established. Let us now examine the grounds for Federal jurisdiction.

A vast number of strikes have arisen in protestation against the denial of the rights guaranteed by section 7 (a) of the Recovery Act and reaffirmed by the present bill. Certainly many of these outbreaks would be prevented if these rights were secured. And that strikes burden commerce cannot be denied. In the *Bedford Stone Cutters case* (*supra*) the stone cutters had refused to work upon a

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stone shipped into States from quarries in other States where non-union labor was employed. The Court held this a violation of the antitrust laws on the ground that refusal to work upon this stone necessarily decreased the orders for more stone from the quarries in other States and thus affected interstate commerce. If the Court can take so broad and interpretation of commerce when the result of so doing is to frustrate the attempt of the wage earner to better his economic condition, it certainly should take an equally broad view when acting to diminish strikes by preventing the unfair labor practices which provoke them. And it is clear that these practices may be enjoined before the strike occurs. As Chief Justice Taft said in the first *Coronado case* (259 U. S. 344 (1933):

> If Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain, or burden it, it has the power to subject them to national supervision or restraint.

In fact, none of the cases under the antitrust laws has gone to the constitutional limit of Federal power over interstate commerce. Where the court has refused to enjoin strikes it has not been for lack of such power, but because the burden upon commerce was not deemed such as the antitrust laws intended to prohibit. Statutory construction of these laws has fixed the boundaries. But the Federal Government has the power within the Constitution to prevent any burden whatsoever upon interstate commerce. And there can be no doubt that Congress intends this power to be exercised in full to prevent unfair practices that cause or threatened to cause even the slightes burden.

I want to emphasize even more strongly the constitutional power and the intent of Congress to prohibit these unfair labor practices even where they do not lead or threaten to lead to strikes. Under our present economic system collective bargaining is one of the essentials for maintaining an adequate distribution of purchasing power among the population generally. The impairment of collective bargaining is likely to intensify the maldistribution of buying power, thus reducing standards of living, unbalancing the economic structure, and bringing on depressions with their devastating effect upon the flow of commerce. The theory of the Recovary Act is that wage fixing by means of codes may bear a direct relationship to interstate commerce. If that is true, other processes of fixing wages, such as collective bargaining, have an equally important bearing upon such commerce.

The Supreme Court already has recognized the relationship between prices and commerce. In *Chicago Board of Trade* v. *Olsen* (262 U. S. 1) (1922), upholding the validity of Federal regulation of boards of trade at terminal markets, the Court said:

> The question of price dominates trade between the States.

In effect upon commerce wages are undistinguishable from prices.

In the more recent case of *Appalachian Coal* v. *United States* (53 Supreme Court 471) (1933), the present Chief Justice recognized in dramatic language the relationship between general business conditions and the flow of commerce. He wrote:

> The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts and communities depend upon profitable production are prostrated, the wells of commerce go dry.

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This language is no less applicable when Congress has declared that the lack of enforcement of the right to bargain collectively is having an adverse effect upon the maintenance of sound economic conditions.

While this bill does not intend to go beyond the constitutional power of Congress, it goes to the full limit of that power in preventing these unfair labor practices. It seeks to prevent them, whether they affect interstate commerce by causing strikes, or by destroying the equivalence of economic forces upon which the full flow of commerce depends, or by occurring in interstate commerce.

The recent decision in the *Weirton case* is based upon Judge Nields' finding that the activities of the Weirton Co. union did not interfere with the freedom of employees to organize, as guaranteed by section 7 (a) of the Recovery Act. It seems clear that this decision is far out of line with that of the United States Supreme Court in the *Texas & New Orleans case*, to which I have referred, and which held that activities similar to those at Weirton were illegal under the Railway Labor Act of 1926, an act no more specific in its terms than section 7 (a). Not a single lawyer with whom I have talked has been able to explain Judge Neilds' failure not only to distinguish but even to refer to the *Texas case*. But, even if it were to be conceded that Judge Nields correctly interpreted section 7 (a), his decision merely emphasizes the need for strengthening that section and creating a permanent administrative tribunal versed in the complexities of labor relations to deal with such matters.

Since Judge Nields found that section 7 (a) does not outlaw the activities complained of at Weirton, his discussion of the constitutionality of that section is pure dictum. I cannot believe that this dictum of a single district judge as to the extent of the power of Congress to regulate interstate commerce will weigh very heavily with this committee, particularly since his limited concept of interstate commerce, while in line with many early decisions of the United States Supreme Court, is clearly at odds with later decisions of our highest Court which I have discussed and which are responsive to the changing character of our national economic life.

I am sure that this review of the proposed legislation and its purposes will make people wonder why it has caused such opposition in some quarters. It has been branded radical by some and ultraconservative by others, but every one of its principles has been sanctioned by a long train of laws of Congress. It has been called inopportune and hasty. But is it not time to act upon the ominous industrial disturbances of last summer, when blood ran freely in the streets and martial law was in the offing? Is it not time to note that during the last half of 1934 and the first month of this year almost three-quarters of a million workers were sent back to their jobs or kept from leaving them by the National Labor Relations Board and its regional agencies?

This bill has been called one-sided and directed against industry. If this criticism could be sustained, it would certainly be decisive. American industry is deserving of every consideration. It has played a tremendous role in developing economically the greatest Nation in the world with the highest standards of living for people in all walks of life. Industry as a whole has met the problems of the recent de-

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pression and the immediate problems of industrial unrest with heroic courage, resourcefulness, and public spirit. It will continue to exert the same profound influence and fine leadership in American life. Upon its welfare depends the welfare of all. The congressional duty to help industry solve its difficulties is coincident with the duty to help workers or consumers.

But the proposed measure is not derelict in its duty at all. Is not economic strife a curse to every group? Is not industrial peace beneficial to all? Has not every step in the "new deal" program attempted to embrace the interests of the public at large? Is there a single right guaranteed to employees by this measure which employers do not already enjoy? The new law will apply the healing balm of an upright, impartial, and peaceful forum to industry and labor, and thus will benefit employers, workers, and the country at large. [Applause.]

I thank you for your extreme patience.

The CHAIRMAN. It may interest you to know, Senator, that this is the first time since I have been chairman of this committee that I have heard this committee applaud any witness.

Mrs. Norton, any question?

Mrs. NORTON. No; I have not any question to ask, Mr. Chairman. I have not read the bill, so I am not in position to ask any intelligent questions.

The CHAIRMAN. Mr. Welch? Mr. Keller?

Mr. KELLER. Before I ask a question, I would like to suggest this: That this statement here ought to be published as a separate document for the use of the men who are trying to think along this line. I have never heard any exposition of this subject that expresses it so clearly. Here is something that you can take from the beginning and trace through perfectly logically to a conclusion that is just as irresistible as it is possible for the human mind to conceive, and I ask the chairman to take such steps as necessary to prepare this as a special document, not only for this committee, but for the entire public's use.

Mrs. NORTON. Do you put that in the form of a motion?

Mr. KELLER. Yes.

The CHAIRMAN. Gentlemen, it has been moved by Mr. Keller, and seconded by Mrs. Norton, that the chairman take such steps as necessary to have this incorporated in a special document. I suppose the best thing to do would be, since it is in the record, to have it printed, and I can extend my remarks. Is that enough?

Mr. KELLER. That is the way to do it.

The CHAIRMAN. We can start with that, anyway, and we can see what we can do afterward. Those in favor of that motion say "aye"; the contrary, "no."

It is unanimously carried.

Mrs. NORTON. I think that would be the better way, because it could be sent out under the Senator's frank.

Mr. KELLER. And the rest of our franks. If I can get this document, I shall use it extensively in my own district.

The CHAIRMAN. I think it is the finest statement made before this committee.

Mr. KELLER. It is really a great statement.

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Senator WAGNER. I think that some of these United States Supreme Court decisions have been entirely overlooked in the discussions on the subject, and I think they show they have already approved exactly what we are trying to do in this legislation, and it answers all of these critics—Mr. Emery and others—who insist that everything we do is unconstitutional.

Mr. KELLER. Senator, you have so well stated what I have tried to say along that very line, and it has tremendously impressed me.

Senator WAGNER. If the members of the committee would not mind letting it go until tomorrow, and then asking me questions, I will be delighted to come back.

The CHAIRMAN. Do you want to get away?

Senator WAGNER. I want to be at a session at 12 o'clock for some particular reason.

The CHAIRMAN. Senator, we will be glad to have you tomorrow, because I think this committee would like to ask you some questions.

Mr. DUNN of Pennsylvania. I want to tell the Senator that I listened patiently, and I want to say he can deliver a speech as I can, but I learned a lot about the Supreme Court decisions.

Mrs. NORTON. The gentleman from Pennsylvania is very modest.

Mr. SCHNEIDER. I was going to suggest that, if it is agreeable to the committee, we might put off his return a few days, until we can digest his statement.

Senator WAGNER. I am at your service. I think it is very helpful to have this exchange of views.

Mr. WOOD. I was going to suggest that, Mr. Chairman.

The CHAIRMAN. I will let the Senator know, and he can advise us if it is convenient for him to return.

Mr. DUNN of Pennsylvania. Senator, do you have any copies of this?

Senator WAGNER. I have not right now; no.

Mr. WOOD. I make the motion that there be 10,000 or 15,000 copies printed, in the same way as the President's messages are printed.

The CHAIRMAN. That will have to be taken up with the Committee on Accounts.

Mr. LESINSKI. Has the automotive industry testified before your committee?

Senator WAGNER. They have not yet, but I understand they will.

Mr. LESINSKI. I happen to have a letter here from them, and another one from General Motors, who has given me a résumé of the testimony given by Robert C. Graham, of the Graham-Paige Motor Car Co., that they have testified.

Senator WAGNER. Was that last year?

Mr. LESINSKI. No; February 13, 1935.

Senator WAGNER. I do not know what committee that was; do you know?

Mr. LESINSKI. Judiciary Committee.

Senator WAGNER. That was under the 30-hour week bill, probably, because this bill is pending before Education and Labor in the Senate, and the hearings only began this week.

Mr. LESINSKI. As I understand, Mr. Reeds, the vice-president of the motor company, will be called.

Senator WAGNER. They are opposed to it. They spent considerable money in propaganda last year, and, unfortunately, part of

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what they sent out was a gross misrepresentation of the provisions of the bill. That was last year, and I do not think they will dare do that this year, because there has been considerable agitation about its provisions.

Mr. LESINSKI. May I make one suggestion?

Senator WAGNER. Yes.

Mr. LESINSKI. After all of this testimony is taken, could not the Senate and House committees get together and make a résumé of all of this testimony?

The CHAIRMAN. You will have that. You will have your hearings in the committee here and in the Senate.

Senator WAGNER. This is the statement that they made, "Well, this bill is to compel every worker to join a national union." There is not any such thing in the bill; and to develop that, what would happen if all of the workers had been in one union? It was that sort of thing that I wanted—well, I do not want to characterize it.

The CHAIRMAN. We will put 1 whole day aside for the Senator.

Mrs. NORTON. What effect does this bill have on 7–A?

Mr. WAGNER. It will enforce 7–A.

Mrs. NORTON. It will strengthen it?

Senator WAGNER. Yes; it is for the purpose of strengthening it.

The CHAIRMAN. We thank you very much, Senator, and I will get in touch with you at your convenience.

The next witness is James Rorty. Mr. Rorty, what are your associations?

STATEMENT OF JAMES RORTY, NEWSPAPER CORRESPONDENT, WESTPORT, CONN.

Mr. RORTY. Mr. Chairman, my name is James Rorty. My permanent address is Westport, Conn., and I am special correspondent for the New York Evening Post and the Stern papers, which include the Philadelphia Record and a couple of papers in Camden. The Stern papers are a chain of papers owned by David Stern, and the New York Evening Post is the New York paper of that chain. The Philadelphia Record is the Philadelphia paper.

Mr. WOOD. What is the name of the Philadelphia chain?

Mr. RORTY. I do not know that it has any name, except it is owned by David Stern.

Mr. WOOD. How many papers?

Mr. RORTY. Four. The correspondence which I was authorized to do was for the New York Evening Post and a few of the papers in that chain.

The CHAIRMAN. Mr. Rorty, in connection with this Connery bill, the Wagner-Connery bill, it seems to me that your experiences in California, because of being put in jail out there and run out of the Imperial Valley, and run out of Arizona, as I understand it, would have a direct bearing on this bill—I mean the conditions out there which exist would be remedied by this sort of bill, and that is why I asked you to come before the committee. You can make your general statement, if you care to, and put any brief in the record that you wish, and the committee will be glad to ask you questions.

Mr. RORTY. It is my view, Mr. Chairman, that my experience in the Imperial Valley has some bearing on the present hearing, and I

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will attempt to develop what bearing I think it has, and I have written a report of my experiences and supplemented this report with some other data, and I will read that and then I will be glad to answer any questions. This is simply a factual statement of who I represent, why I came into the Imperial Valley, what I did, and what was done to me.

James Rorty, representing the New York Post and the Nation, accompanied by Charles Malamuth, arrived by automobile at El Centro, county seat of Imperial County, Calif., on Sunday evening, February 24, 1935, for the sole purpose of ascertaining and reporting objectively the facts concerning the current strike of lettuce shed workers in the Imperial Valley and the state of the lettuce-growing industry.

The plan for gathering data consisted of interviewing all persons connected directly or indirectly with the strike condition in the Imperial Valley who had information on the subject and of directly investigating by means of visits to fields, sheds, dwellings, and various places of assembly the working and living conditions of the striking workers. The persons to be interviewed were: Representative growers; official representatives of the growers; officers of the county, the State, and of the United States Government; representative workers; official representatives of the Fruit and Vegetable Workers' Union, of the American Federation of Labor—in brief, all whose duties comprised the gathering of information concerning labor and living conditions, management, and marketing of the lettuce crop, the agricultural economics of the Imperial Valley, the administration of emergency relief, the preservation of law and order, sanitation, housing, and similar factors indispensable to a clear and complete account of the situation.

I should add, in explaining my presence in the valley, that I started out about the 1st of October, following a period of employment on the staff of The Nation, to make a trip of about 6 months from coast to coast and back, going by the northern route and returning by the southern route. My object was to acquire data for the writing of a book. I desired also to do some newspaper and magazine correspondence, and on the first leg of my trip, for a period of 2½ or 3 months, I was doing about two stories a week for the New York Evening Post and the Stern papers. I also contracted to do an article a month for The Nation. I was also prepared to do various free-lance writing for various other magazines.

I can continue then the report of my experiences in the Imperial Valley, with that added word of explanation to indicate that I was interested not merely in doing my newspaper and magazine correspondence, but to acquire more detailed data necessary for the writing of a book dealing with the general conditions of the country, with the labor situations, with public works, which I visited en route, and with various other factors of economic and social psychology.

In the Imperial Valley those interviewed were:

Fred Bright, a representative lettuce-shed owner and operator. It was planned to interview A. C. Wahl, at whose shed two strikers, Paul Knight and Eldredge Hamaker, were killed by armed strike-breakers, and also other shed operators, but this was forestalled by our expulsion.

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C. B. (Chet) Moore, executive secretary of the Western Growers' Protective Association, spokesman for the lettuce-shed operators and farmers, twice.

Captain Cunningham, local representative of the United States Department of Labor.

The Director of the State Emergency Relief Administration for Imperial Valley, at El Centro.

John R. Lester, Deputy State Labor Commissioner of the State of California, at El Centro.

Dr. Warren Fox, local director of the United States Public Health Service and health officer of Imperial County.

Sheriff Robert (Bob) Ware of Imperial County.

The Imperial County Irrigation District.

The El Centro Chamber of Commerce.

The two El Centro daily newspapers, the Imperial Valley Press and the El Centro Morning Post, purchasing complete files dealing with reports of the strike as a source of material.

C. B. Lawrence, secretary of the Fruit & Vegetable Workers' Union of the American Federation of Labor, leader of the strike.

Arrested strikers incarcerated in the Imperial County jail.

Emma Cutler, the sole, albeit unofficial, representative of the Communist Party in the Imperial Valley, to check on statement credited in the press to C. B. Moore that the Communist Party was behind the strike. Emma Cutler was interviewed in the county jail, where she is serving 6 months on a charge of vagrancy, having been framed after a 3-hour sojourn in the Imperial Valley. So far as I know, that is the only member of the Communist Party that I saw. Miss Cutler is serving 6 months in the El Centro jail on a charge of vagrancy. She was put in jail after a 3-hour sojourn in the Imperial Valley. She is, in no sense, a vagrant, and a sentence of 6 months for vagrancy is obviously a miscarriage of justice, I should say.

Arrangements made to visit Fred Bright's lettuce shed and other sheds, domiciles of American, Mexican, and Filipino workers, labor camps, fields, and other places were not carried out because of the expulsion.

The CHAIRMAN. Where was that?

Mr. RORTY. That was in El Centro. Then we were accosted by a drunken chap, who attempted to get acquainted with us and proposed various parties, consisting of liquor and women, who was so obviously a stool pigeon that we simply shrugged our shoulders. We went down the street and I returned later and asked the proprietor who the fellow was. The proprietor said he was a former deputy, but had been fired for drunkenness. Aside from that. I knew nothing about him. I was not able to get a dependable record of his name; he disappeared; but I mention that to indicate that, for some reason, we were under observation as soon as we got in town.

Sunday evening, February 24, 1935, upon arrival we secured lodgings, placed the automobile in a garage for repairs, and had dinner at a local restaurant, where we were accosted by a drunken braggart and bully who upon later investigation was ascertained to have been a stool pigeon and deputized strikebreaker. After dinner

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Rorty and Malamuth walked about El Centro to ascertain the location of various offices and institutions and made arrangements to interview C. B. Lawrence the following morning. Lawrence is the business agent of the American Federation of Labor Union.

Monday, February 25, the following were interviewed: The local S. E. R. A. administrator, Lawrence, Cunningham, Lester, Chet Moore, Sheriff Ware, the imprisoned strikers, Emma Culter, the office of the irrigation district, the chamber of commerce, both newspapers.

Tuesday, February 26, were interviewed: Fred Bright, Chet Moore, Cunningham, Lawrence, Dr. Fox, and Lester. Repeat interviews were necessary to check and recheck contradictory evidence submitted. Arrangements made with Bright to visit his lettuce shed later in the day, and arrangements made with Dr. Fox to visit, under his guidance, labor camps and domiciles of workers were forestalled by arrest.

At about 3 p. m. Tuesday Rorty was arrested at the garage by a deputy sheriff as he was about to drive his automobile out to keep the labor camp inspection appointment with Dr. Fox. Malamuth was arrested on the main street by Chief Criminal Deputy Sheriff Sharp while on his way to meet Rorty and Dr. Fox in front of the courthouse.

Rorty's automobile was searched, all his baggage unloaded and ransacked by deputys sheriff and "red squad" stool pigeons, including Chet Moore. Both Rorty and Malamuth were badgered with questions and accusations, rather than interrogated in a law-abiding manner; their credentials were brushed aside as invalid and immaterial, their factual statements treated as deliberate, subversive lies; the most innocuous printed matter, for example, a circular of the University of Pittsburgh, was closely scrutinized in an effort to decode purely descriptive statements as insurrectionary appeals.

Present at this ransacking and this grilling of myself and Mr. Malamuth, the ransacking of my automobile, was Mr. C. B. Moore; and at this point, I wish to expand the record by indicating the coincidence of the presence of Mr. C. B. Moore.

The CHAIRMAN. Who was he?

Mr. RORTY. He was the secretary of the Western Growers' Protective Association. Mr. Moore was interviewed the evening before, and he was also interviewed that morning. The evening before he told me his official account of the strike, which did not correspond in any way with the other accounts that I had already received. I did not question his own account; I simply took his story; and the next morning I was interviewing Fred Bright when Mr. Moore appeared, and Mr. Moore had in his pocket a clipping of a dispatch printed in the New York Evening Post, summarizing the Leonard-Lubin report of the troubles in the valley last year; and Mr. Moore was very much upset, and he said that if he had known I represented any such dirty, unfair sheet when he talked to me the preceding evening he would have kicked me out; and I said, "But, Mr. Moore, this is a Government report. The story is simply a summary of the report of officially appointed State investigators, and I cannot see that you have any grievance. In any case, you are not correctly informed about the Evening Post;

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its policies and character are well known, and I fail to see right where you have any grievance against me." But Mr. Moore continued to be somewhat belligerent; and I submit, not as a statement of fact but merely as the possibility of Mr. Moore's desire to prevent me from continuing my investigation was, possibly, in some degree, responsible for my later arrest and expulsion, along with Mr. Malamuth, because Mr. Moore was certainly informed that I was to be arrested, because he was there in front of the jail when I was brought there with my automobile, and he more or less presided over the grilling and ransacking of my possessions that followed.

The CHAIRMAN. Do you think that he was responsible for your arrest?

Mr. RORTY. That is my belief.

The CHAIRMAN. Did he make a complaint against you?

Mr. RORTY. There was, at no time, any charge against me. The sheriff had no warrant. I was seized and held for investigation.

Mr. KELLER. How long were you held?

Mr. RORTY. I was held a little over 4 hours. The arrest was about 4 o'clock, I would say. I was told that we would be released at noon the following day. At 1:30, approximately, we were expelled and with a police escort.

Mr. DUNN of Pennsylvania. Were you put behind the bars?

Mr. RORTY. I was put in jail; yes.

Mr. MARCANTONIO. You were not arraigned before any sitting magistrate?

Mr. RORTY. No; I was not arraigned. I will continue with this account and supplement it. Then Rorty and Malamuth were accused of misrepresenting their true mission in El Centro, by Sheriff Ware himself; were searched, booked as "Held for investigation", and locked up in different tanks. My credentials were so complete that it is impossible for me to believe that either the sheriff or Mr. Moore had any illusions at all about what they were doing. Not only did I have authorization from the New York Evening Post and the Nation for the work that I was doing, but I had a telegram from the New York Times and one from the New York Evening Post, ordering me to do a story of specified length. Those telegrams were in my pocket and were duly shown to the sheriff, and I believe were shown to him before.

They accused us of misrepresenting our true mission in El Centro. Sheriff Ware made that accusation. We were searched and held for investigation and locked up in separate tanks, or whatever you call them.

The total period of incarceration was from 4:45 p. m. of February 26 to 1:30 p. m. of February 27, 1935. Both Rorty and Malamuth were held incommunicado, their repeated attempts to communicate with counsel or kind being systematically and consistently ignored by the jailers. Malamuth was not provided with the evening meal and was lodged in the same tank with H. J. McGuire, the deputized strikebreaker who is alleged to have killed Paul Knight. Both men were incarcerated in overcrowded tanks; Rorty was 1 of 17, Malamuth 1 or 20, each in a tank with accommodations for 10.

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Rorty and Malamuth were jointly subjected to repeated "show-ups" on the afternoon and evening of February 26 and after the lock-up for the night on the night of February 26–27, the exact hour being unknown because of the previous removal of watches by the jailers, but obviously in the middle of the night. The following morning, after further subjection to "show-ups", both Rorty and Malamuth were mugged, fingerprinted, still held incommunicado. I believe that "show-up" is the proper term, but they lined us up against the wall with holes in the opposite wall through which stool pigeons and detectives were peering at us.

Finally, shortly before noon, Rorty and Malamuth were taken before County Sheriff Ware and Chief Criminal Deputy Sheriff Sharp, and were informed by these officers that they would be released as soon as possible that afternoon; that is, as soon as a sufficiently strong posse of sheriffs could be assembled to escort them out of El Centro and Imperial County to the Arizona State boundary. Rorty said that this escort would be advisable as protection against possible attacks by vigilantes. Neither he nor Malamuth requested the expulsion. But if they were going to be released police protection was obviously necessary in view of the experiences of others in the past. Sheriff Ware then informed both men that all of their property would be returned to them intact, with the exception of a letter addressed to Rorty which the sheriff chose to keep for further reference. Subsequent examination by Rorty and Malamuth of their baggage disclosed that the sheriff was not altogether truthful, for certain printed matter, for example, a copy of General Glassford's report, could not be subsequently located by Rorty among his belongings. The men were returned to their tanks.

At 1:30 p. m. they were again let out of their cells and, escorted by sheriffs, one automobile with sheriffs preceding them, another automobile with sheriffs directly behind their automobile, were expelled by circuitous routes and byways out of El Centro and Imperial Valley to the Arizona State line. At Yuma, Ariz., they were picked up by Maricopa County sheriffs and escorted to a point approximately 15 miles along the highway to Phoenix.

James Rorty is a resident of Westport, Conn.

Charles Malamuth resides at 3131 Madera Avenue, Los Angeles, Calif.

That last statement was due to the previous experience of a number of liberal lawyers and journalists in the valley, whose experiences had been recounted in reports by various investigating committees, including the Leonard-Lubin report and the Glassford report.

Mr. KELLER. What do you mean by the Leonard-Lubin report?

Mr. RORTY. I have it right here.

Mr. KELLER. Are they here?

Mr. RORTY. No; that is Simon Lubin of California.

Mr. KELLER. That is all I wanted to know.

Mr. RORTY. Neither Malamuth nor myself requested expulsion. I make that statement because I believe that the sheriff has stated to the press that we requested that we be put out of the valley. Obviously, we would make no such request. I had a job that would have taken 10 days or 2 weeks; it would have taken that long to

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make a respectable stab at it, which was a very difficult, detailed investigation. My instructions from my editors were, specifically, that I was to do an objective story in presenting both sides. The evidence of the people that I interviewed indicated that I was making that effort to get both sides. I made no request to be expelled, but when they said I would be expelled, I said I would certainly approve a police escort, because if they dumped us on the street in front of the jail, we would be seized and probably beaten up, in my belief, because nobody else had ever been arrested under similar circumstances or had been in the valley and managed to get away without being beaten, so far as I know.

Mr. WOOD. You nor your associate never, at any time, suggested that you be escorted out of the State?

Mr. RORTY. Never, no.

Mr. DUNN of Missouri. You did not have to request that; they sent you out?

Mr. RORTY. Yes; and I cannot state that too strongly.

As to our belongings, I asked the sheriff by what right he kept them, and he said because he wanted to. One letter consisted of a list of subscribers to the publication that was the organ of the now defunct Communist League. The subscribers were people of intelligence whom I desired to contact on my trip, because they represented one wing of the radical movement, and I was talking to all wings and the American Federation of Labor and the chambers of commerce, and it was entirely proper that I should have that material, and it was illegal, as far as I know, that the sheriff should retain it.

For example, I had obtained a copy of the Glassford report, and later on I was not able to find that Glassford report.

The CHAIRMAN. That Glassford report was a report made by General Glassford, formerly Chief of Police of Washington, who was sent out there by Miss Perkins?

Mr. RORTY. That is right. I have that report right here. General Glassford was sent out there to represent the Department of Labor, the Department of Agriculture, and the National Labor Board. How much more of my stuff was kept I have not been able to check. As I say, I had about a hundred pounds of documents, and I cannot find my address book and the Glassford report, and I am fairly confident both of those were retained.

As I say, we were sent back into our cells after being grilled, and at 1:30 we were again let out and escorted by the sheriffs. One automobile with the sheriffs preceded us, and they went around a circuitous route before we hit the main road to Yuma, and then when we reached the bridge they simply waved and told us to go on. The statement has appeared in the press that we were escorted out of the county by the county sheriff, and I believe that is true, and I think the statement has been made by the Maricopa County sheriff, and I suspect that was true, because as I drove out toward Phoenix I saw that a car was following us.

I stopped at an airport about 10 miles out of town, I think, and the lead car slowed up and turned around and went in the airport. I tried to go into the airport and I said I wanted to have a look at it, and they said it was not open to visitors, and I said, "How

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about the fellows that just went in; are they your officers?" And they said "Yes." I assume they were Maricopa County sheriffs.

So I continued to drive for about 120 miles until I got to a small town called Sentinel, a tank town on the railroad, and there I wired my editor, the first wire I had been able to get off, and I wrote my story the next day.

That is the substance of my experience there, and perhaps it would be just as well for me to answer any questions now, and then continue later.

The CHAIRMAN. All right. You were not run out of Arizona, were you?

Mr. RORTY. So far as I know, at no time did the Maricopa County sheriffs stop us or speak to us. It was merely my observation that the car following us had two men in it, who were apparently sheriffs. I picked up in the press a statement by the Maricopa County sheriffs that they kept us moving out of Maricopa County.

The CHAIRMAN. They ran you out of El Centro; is that close to the Arizona line?

Mr. RORTY. About 100 miles, I think.

The CHAIRMAN. Did they take you up to the State line?

Mr. RORTY. They took us right up to the bridge and told us to keep going.

The CHAIRMAN. The State line?

Mr. RORTY. Yes.

The CHAIRMAN. So that you were run out of the State of California?

Mr. RORTY. Yes.

The CHAIRMAN. First of all, are you a Communist?

Mr. RORTY. I am not a member of the Communist Party of America.

Mr. MARCANTONIO. Even if he had been a Communist, he had a right to be there.

The CHAIRMAN. Yes; I simply bring that up because everybody here hears the statement that you are a Communist, if you stand up for the rights of people.

Mr. MARCANTONIO. I want to go on record further than that: Even if he had been a Communist he had a right to be there.

Mr. RORTY. That is my own view.

Mr. DUNN of Pennsylvania. May I say the same thing?

The CHAIRMAN. Your purpose of going out there, as you have testified, of course, was to write these articles, and you wanted to find out the labor conditions in that valley?

Mr. RORTY. Yes, sir.

The CHAIRMAN. As far as this bill is concerned, on page 3, section 3, it says "but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parents or spouse." So this part of the bill would not apply to agricultural workers.

The reason that I invited you before the committee is, that I wanted the committee to get this evidence of yours, because what has happened to you has happened in many similar cases directly in industry which this bill is concerned with. For instance, Mr.

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McGrady, who is Assistant Secretary of Labor now, when he went down into Tennessee, was run out of town; and down in Hardin County, Ky., people went in there to find out the conditions of strikers, and they were run out of town; and now you have the same thing happen to you in the agricultural situation.

Now, can you tell us anything, from your experience out there, of what was going on in that strike, what they were striking for, and about the workers' conditions out there?

Mr. RORTY. You will have gathered from my former statement that I have already made, that my investigations were interrupted. Therefore, the information I gathered was fragmentary. I can, however, make certain statements about the conditions that I encountered and certain statements made to me by workers and the business agent of the A. F. of L. union.

The CHAIRMAN. The Glassford report gave, too, I suppose, the conditions out there, did it not?

Mr. RORTY. Sure. In that Glassford report, a copy of which I have and which I will be glad to submit for the record——

The CHAIRMAN. Is it long?

Mr. RORTY. It is a very short report, consisting of six pages.

The CHAIRMAN. If there is no objection on the part of the committee, I would like to have it go into the record.

(The report of Pelham D. Glassford is as follows:)

BRAWLEY, CALIF., *June 23, 1934.*

To: Imperial County Board of Supervisors.
From: Pelham D. Glassford, special conciliator.
Subject: Recommendations concerning labor conditions in Imperial Valley and resulting lawlessness.

Before departing from Imperial Valley it is appropriate that I submit to you certain recommendations deemed essential for the amelioration of labor conditions. The difficulties arising from alien labor and its control present important considerations. On this subject I am submitting recommendations direct to the Federal Government.

STANDARD OF LIVING OF MEXICAN FIELD WORKERS

As a result of my investigation it appears that standard of living of Mexican field workers, at the present time, is based upon an average annual income of less than $400. With intermittent periods of employment, and the necessity for automobile transportation to seek work at the widely scattered ranches, very few Mexican families of agricultural workers are able to maintain a decent existence. Although it is boasted that melon pickers are able to earn $5 or more a day (occasionally as much as $12), the number of days when such earnings are possible are comparatively few, the melon pickers represent a small percentage of the field workers employed throughout the year. On one ranch where melon pickers were employed during a period of 15 days, I found that their average daily earnings amounted to less than $1.50 a day. It may be true that alien Mexicans receive higher wages and live better in Imperial Valley than they do in their own country, but this cannot constitute an excuse for countenancing poverty and squalor in the United States.

To ameliorate the living conditions of agricultural field workers, I submit the following recommendations:

1. Establish seasonally a minimum wage scale for all types of agricultural labor, based upon a reasonable balance between profit and labor costs.

2. Reduce the unemployable aliens on relief and the surplus of alien labor by inaugurating a system of repatriation of alien Mexicans such as has been accomplished successfully in Los Angeles County (see recent report of Mr. Rex Thomson, Bureau of County Welfare).

3. Promote the establishment of small farm homes of one-fourth to one-half acre, to supplant the system of congested ranch camps, thus enabling resident workers to provide at little cost a large part of their subsistence requirements.

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STANDARDIZATION OF WAGE SCALE

Difference in wages paid by different growers I find to be one of the most important sources of discontent. Although an agreement on wages and other stipulations was made on March 27 for the present melon-harvesting season, this agreement was not sufficiently inclusive, as to the types of labor, not strictly enforced, and subject to variations depending upon difference in interpretation.

Likewise the necessary protection to growers by withholding part of the wages until the end of a contract has not always been accomplished in conformity with the State labor laws. A wide variation in the amount withheld by different growers has been a serious source of discontent.

Recommendations:

1. Prior to a harvesting season the growers and shippers should be urged to prepare a standard wage scale covering all types of agricultural labor, with adequate provision for its enforcement.

2. A bonus, when necessary for the protection of the growers, should be standardized, and specified as entirely separate from wages. Rules should be standardized relating to the conditions under which a bonus may be earned at the end of the contract, or upon discharge prior to the termination thereof.

3. Standard forms of contracts for agricultural labor should be prepared to replace the several different forms now in use. When a contract provides for a bonus, the wording of the form should be specific in regard to the time and conditions of payment. These revised forms should be prepared by a committee of growers in collaboration with the division of industrial relations.

PROTECTION OF WORKERS AGAINST EXPLOITATION

There have been a great many instances where the workers have not been paid for their labor, due to the failure of the tenant grower to realize from his crop. In most of these cases a shipper or wholesaler contracts with a tenant grower for the marketing of his crop and provides funds in advance or at intervals for the expense of planting and harvesting, and often for the living expenses of the grower. The shipper or wholesaler assumes no responsibility for the payment of labor.

As an outstanding example there are unpaid labor claims against H. S. Fujita, accumulated since 1931, amounting to more than $1,800, yet this tenant grower operated a melon and tomato ranch this year without meeting his current labor obligations in full.

Recommendation:

That the State labor laws be strengthened to protect the workers, in the receipt of their wages, to include payment of the workers' wages direct by some bonded or responsible party, a system already in vogue by some of the larger growers and shippers.

THE PROBLEM OF SURPLUS LABOR

Although it was asserted by several growers and shippers that there was adequate resident labor in Imperial Valley to meet the demands of the present melon-harvesting season, efforts to secure preferential employment to resident workers have met with little success. The traditional "fruit tramps" cannot be immediately eliminated; nor is it possible to prevent entirely the migration of agricultural labor to take advantage of seasonal opportunities. The question of migratory agricultural labor in California presents a tremendous problem, and Imperial Valley is one of the principal sufferers.

It will be possible to gradually ameliorate these conditions through a system of labor registration, and the utilization of the United States Employment Service, Department of Labor (in collaboration with other employment agencies) in regulating the movement of agricultural labor.

A tentative plan for this purpose was placed before the chairman of the board, and discussed with a large number of growers. A revised plan has been forwarded to the Department of Labor for consideration. A copy is forwarded to the chairman of the board of supervisors under separate cover.

Recommendation:

That the growers and shippers cooperate with the Department of Labor in instituting a plan for the registration and supply of agricultural labor.

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IMPROVEMENT OF MARKETING CONDITIONS AND FINANCING

Wages are dependent upon receipts for the perishable crops of Imperial Valley, and receipts are dependent largely upon marketing conditions.

Some of the larger growers and shippers are well organized for marketing, and thereby possess decided advantages over their smaller competitors, many of whom have inadequate backing financially, and as a consequence frequently are forced to dispose of their crops at a considerable loss.

It is believed that conditions can be improved by the establishment of equitable and effective policies of proration, including, when necessary, plowing under crops that must, for the good of all, be eliminated from the market.

Unquestionably the Department of Agriculture will welcome an opportunity to assist in questions of marketing, finance, and reduction of the high costs of transportation, provided the problems of Imperial Valley can be fairly and impartially presented.

Recommendations:

1. A comprehensive study of equitable proration and the enforcement thereof.
2. Appointment of a committee, to include smaller growers, to present to the Department of Agriculture the problems of finance, marketing, and costs of transportation.

INVESTIGATION OF LAWLESSNESS BY THE GRAND JURY

After more than 2 months of observation and investigation in Imperial Valley, it is my conviction that a group of growers have exploited a communist hysteria for the advancement of their own interests; that they have welcomed labor agitation, which they could brand as "red", as a means of sustaining supremacy by mob rule, thereby preserving what is so essential to their profits, cheap labor; that they have succeeded in drawing into their conspiracy certain county officials who have become the principal tools of their machine.

It is first my endeavor to correct the situation by argument and persuasion. This failing to curb illegal assaults, intimidation, and unfair convictions, it became necessary to take a decided stand against the continuance of these deplorable conditions.

Standing within the power of the board of supervisors is the removal from office of Mr. B. A. Harrigan, agricultural commissioner. In my opinion he has not always made fair and impartial use of his powers. Several who claim to be victims of his tyranny and unfairness have come to me with their stories. Fearing reprisal they have exacted my promise not to reveal their names or accusations. Attached for your consideration are statements I am at liberty to present.

Spread upon the pages of recent Imperial Valley history are certain lawless and illegal events which have been suppressed or distorted in local news accounts, and which have not been investigated by the officials who are charged by law with that responsibility. Reputable clergymen, lawyers, business men, and other citizens of Imperial Valley have informed me of their personal knowledge and observations, insisting upon a promise of confidence, so great was their fear of retaliation, boycott, or actual violence. One active vigilante remarked, "I'd like to be out of this mess, but what can I do? If I don't 'line up' my business will be ruined."

I strongly recommend a thorough grand-jury investigation, and the indictment of those who have been guilty of law violations in connection with an apparently organized campaign of terrorism and intimidation.

Particularly do I recommend the investigation of the following:

1. The kidnapping and abuse of Attorney A. L. Wirin on January 23, and the running of his automobile over an embankment on January 24. It seems to be common knowledge that one deputy sheriff and another county official were involved in these affairs.
2. The conviction on February 21 of Miss Emma Cutler on a charge of vagrancy, when she had been in Imperial Valley, prior to her arrest, not more than a few hours.
3. The assault upon Attorney Grover Johnson under the shadow of the courthouse at El Centro on March 28. It seems to be common knowledge that one county official participated in the assault, and that two county officials stood over him in a menacing manner, one of whom is reputed by several witnesses to have declared, when Attorney Johnson asked for his eyeglasses, "If you ever

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return to Imperial Valley you won't need any glasses", or words to that effect.

In connection with this investigation there should be brought to light the interview with the sheriff, and the prior interview with another county official, which I have substantial reason to believe took place in the judge's office on March 28, prior to the hearing on the writ of habeas corpus which resulted in the release of two defendants; also what transpired in a later meeting of the so-called "vigilantes" with the district attorney.

No doubt the assault upon Attorney Johnson was witnessed from the premises or windows of the courthouse by a large number of county employees. Among the witnesses alleged to have been present, whom I have not interviewed, are representatives of the two daily newspapers of El Centro.

Incident to a thorough investigation of these occurrences is the obvious necessity for calling as material witnesses certain members of the American Civil Liberties Union, and International Labor Defense, including Attorney A. L. Wirin, and several of those who accompanied him to Imperial Valley on January 23, as well as Attorney and Mrs. Grover Johnson. It is certain that none of this group would dare come to Imperial Valley under present conditions for fear of a repetition of violence, consequently they should be offered adequate protection.

In view of the evident disqualification of the district attorney to conduct this grand jury investigation without prejudice or bias, it is recommended that the State attorney general be called upon by the grand jury of Imperial County to appoint special counsel to assist in the investigation.

In departing from Imperial Valley tomorrow I feel that I have accomplished all that it is possible to do at the present time. The melon-harvesting season is drawing to a close, and recent complaints have been limited almost entirely to claims of workers for unpaid wages, which come within the jurisdiction of the labor commissioner.

PELHAM D. GLASSFORD,
Representing Department of Labor, Department of Agriculture, National Labor Board.

The CHAIRMAN. What knowledge did you get from talking with the American Federation of Labor—is that the American Federation of Labor union for these workers, these lettuce workers——

Mr. RORTY. That is the workers at the lettuce sheds, who are organized under the vegetable-workers' union, the vegetable- and fruit-workers' union, which is an A. F. of L. union with a floating charter. That means the only type of charter that would be suitable for that type of worker, who is migratory.

The same workers who appear in the Imperial Valley to pack and trim lettuce have come, in a good many cases, from Salinas Valley, further north in California, and following the work of picking and packing in the season in the Imperial Valley, they go to Phoenix, Ariz.

The CHAIRMAN. Now, you spoke about the packing season there, and of course this would affect the canning business, and there would be canned foods?

Mr. RORTY. Yes; that applies to the shed workers who are essentially industrial workers, working in the sheds, packing lettuce and——

Mr. WOOD (interposing). Doing processing work?

Mr. RORTY. Doing processing work; yes. That perhaps would not affect the field workers, although in my view the provisions of this bill should be extended to include the agricultural workers, such as the workers employed in the Imperial Valley, where the type of agriculture is a highly industrial type of agriculture.

The land is leased, in most cases, rather than owned. The lease is by the "growers-shippers", so-called, and that means organi-

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zations like the American Fruit Growers and a couple of others, who also lease the land and produce the lettuce and ship the lettuce in Salinas Valley, around Phoenix, and in other parts of that country. So that they, I believe, produce and ship lettuce all the way from Florida to the Salinas Valley.

The CHAIRMAN. Did you find out if there was anything under the laws of the State of California which would permit them to take you away, without a warrant, that would permit them to arrest you without a warrant and keep you for 24 hours, and not arraign you before you were imprisoned?

Mr. RORTY. I have discussed the matter with counsel during the brief time I have been in Washington. I have no official opinion from any of them, but they are simply lawyers whom I happen to know. Their judgment is, that I would have recourse in the courts of California, but since the courts of California would be dominated by the group which dominates the Imperial Valley it would be futile for me to institute any suit on any of the counts which are available to me.

The CHAIRMAN. How about the Federal court, with the right of a citizen to go into another State and be secure?

Mr. RORTY. I am not informed about that, but I will be glad for the view of any members of this committee as to whether I might institute a suit in the Federal Courts to establish my rights.

The CHAIRMAN. Well, it seems to me under the Constitution a man's right to be taken in without a warrant and held for 24 hours, unless there is something in the laws of California——

Mr. DUNN of Pennsylvania. Mr. Chairman, they can pick him up as a suspect in any State in the Union and get by with it.

Mr. SCHNEIDER. Did you demand protection from the officials of the law, and insist that you had a right to stay there and that you wanted to stay there?

Mr. RORTY. I would not say that I made such a motion, or such forthright demand, because the record of the Imperial Valley for the last year is too long and it exhibits too clearly that there is no such thing as the law and order in the Imperial Valley.

Now, what I rather was afraid was going to happen, when they lodged me in jail, was that they were going to arraign me under their criminal-syndicalism law in California. I was aware of that possibility that I might say something like that, because of other journalists like myself who try to work in troubled territory, and for that reason, if not other, I was extremely careful to keep meticulously within the range of my responsibility as a newspaper reporter.

Now, I had a right, under the law, to go in there and organize, if I wanted to, and I did not do so, because I had a specific job to do which I regarded as important and which I certainly wish to continue to do.

As to demanding my rights, I demanded all of the rights that I had. I demanded permission to telegraph or write. I said, "I can enter the valley for legitimate reasons, and I did enter the valley for legitimate reasons, and I want to stay"; and the statement of the sheriff that I asked to be kicked out of the valley is too absurd, of course.

The CHAIRMAN. What did you mean awhile ago that you had a right to organize?

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Mr. RORTY. Well, as a person sympathetic with the radical movement, which is my status as an individual, I had a right, so far as I know it, to contact the workers and suggest ways and means of enforcing their rights of collective bargaining, which are completely abrogated in the valley, so far as I know. I am simply saying that. I am not a labor organizer; I am a journalist, pure and simple, and that has been the nature of my practice throughout my whole active career.

Mr. WOOD. Let me ask a question, Mr. Chairman. When you say you are sympathetic—you made the statement that you were sympathetic with the radical workers——

Mr. RORTY (interposing). I am sympathetic with the radical movement, and it would be quite impossible for me, as an individual——

Mr. WOOD. What do you call the radical movement?

Mr. RORTY. The radical movement is split up into different varieties, as you probably know, and there are Socialists——

Mr. WOOD (interposing). What would you term the radical movement? What is the function of the radical movement?

Mr. RORTY. The functions of the radical movement are varied.

Mr. WOOD. What function do they have to perform to be called a radical movement?

Mr. RORTY. Their programs are variously defined in their official publications. That is all I can say.

Mr. DUNN of Pennsylvania. Do you believe in old-age pensions and social security?

Mr. RORTY. That is one of the things they advocate, and they advocate the various measures which are now under discussion in Congress here.

Mr. WOOD. Do you call the labor movement a radical movement?

Mr. RORTY. I certainly would regard the American Federation of Labor unions not radical movements, whatever. I note that frequently radicals are active in labor organizations, and I regard—and I, myself, have regarded with sympathy, the efforts of the various radical organizations.

Mr. WOOD. What do you call the radical movement, the I. W. W., Communists, or syndicalists?

Mr. RORTY. I should say that all ought to be regarded as parts of the elements of the radical movement.

Mr. WOOD. Those are the movements that you are in sympathy with?

Mr. RORTY. As to my specific views, I do not think they are pertinent to the present examination. My views have been expressed over a period of years in my own writings, and I can refer you to those.

Mr. DUNN of Pennsylvania. Even the President, since he has been President, has been called a Communist and radical, and so forth.

Mr. WOOD. What I wanted to get the witness to say, or what I wanted to bring out was, the witness said he was in sympathy with these radical movements, and I wanted to know what he termed a "radical movement."

Mr. MARCANTONIO. Will the gentleman yield for one question?

Mr. WOOD. Yes.

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Mr. MARCANTONIO. I assume that he is in sympathy with the radical movement, as he says, but you do not ask that question because you feel he had no right to do that?

Mr. WOOD. Not at all. I just wanted to get the matter defined. He said he favored the radical movements, and I wanted to know what movement he means. Any man that is a citizen has a right to be protected and travel this country.

Mr. RORTY. May I continue?

Mr. WOOD. I just wanted to get that point, I wanted to get what was in his mind when he made that statement, what he meant by radical movements, and I am satisfied now.

The CHAIRMAN. Mr. Dunn?

Mr. DUNN of Pennsylvania. I am going to leave in a minute, but I wanted to ask the gentleman a few questions. Now, the Connery bill last year and this year was considered a radical movement, like the 5-day week, and so on——

Mr. RORTY (interposing). Very definitely so, I should say.

Mr. DUNN of Pennsylvania. And the old-age pension and unemployment insurance is considered radical?

Mr. RORTY. Sure.

Mr. WOOD. It may be considered so, but it is not.

Mr. DUNN of Pennsylvania. It is radical to those beings who like to continue to keep the old people in the poorhouse. I do not hesitate to say, before I depart, that I am for all of that stuff, and I am sorry I cannot go down to California and help him shoot some of those demagogues.

Mr. RORTY. May I continue with certain other evidence which I encountered in El Centro, which I think is interesting to this committee?

I have already offered the Glassford report for the record of this committee, and I would also like to enter into the record a second story I wrote for the New York Evening Post, recounting my experiences, which developed certain evidence that there is systematically practiced coercion under the State and Federal representatives in the valley.

I talked to Dr. Cunningham, who is the official representative of the Department of Labor. Captain Cunningham recognized my name as a writer for the New Republic; the Nation, and various other liberal publication. He said, "It strikes me that you are what they call 'a red.'" He was joking, and I said, "Well, any civilized individual is 'a red' in Imperial Valley, so let it go at that, and I accept the compliment."

The CHAIRMAN. May I interrupt you? For the benefit of the committee, that was General Glassford's letter. General Glassford went to Imperial Valley in April 1934 to represent the United States Department of Labor, the Department of Agriculture, and the National Labor Board, and he wrote as follows:

> After more than 2 months of observation and investigation in Imperial Valley it is my conviction that a group of growers have exploited a Communist hysteria for the advancement of their own interests; that they have welcomed labor agitation, which they could brand as "red", as a means of sustaining supremacy by mob rule, thereby preserving what is so essential to their profits, cheap labor; that they have succeeded in drawing into their conspiracy certain county officials who have become the principal tools of their machine.

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That is what General Glassford said that the growers themselves have set up.

Mr. SCHNEIDER. I understood that the process of employees engaged in processing lettuce and other vegetables—that they were white workers.

Mr. RORTY. Yes.

Mr. WOOD. What you call "shed workers"?

Mr. RORTY. Yes; that is right.

Mr. WOOD. Those that work in the fields are largely Mexicans, Japanese, and Filipinos?

Mr. RORTY. Filipinos, Japanese, Hindus, in that order, I should say.

Mr. WOOD. Do they work for wages?

Mr. RORTY. They work for wages. The common method is for a grower to contract for labor for a given season. The contractor is a Mexican or a Filipino or Japanese, ordinarily. The wages are paid to the contractor, who in turn pays the workers. The efforts of the laboring men—well, the deputy labor commissioner in El Centro, at the end of every picking season, are largely consumed with the hearing of complaints regarding the absconding of contractors, the chiseling of contractors, as well as complaints regarding the employment of women and children for long hours in the sheds.

The statement was made, and I think it will appear in the records—I am sure it will—that Fred Bright, who is known to be one of the most liberal of the shed workers there was, himself, in trouble several times for the employment of women and children.

The season is a rush season, because the crop is highly perishable. The workers are employed sometimes from 4 o'clock in the morning until 10 o'clock at night over a stretch of a couple of weeks.

I can recite, if you like, the issues or demands for which the American Federation of Labor union was founded. I regret that I have not a formal statement, because it also appears to have been retained by the sheriffs, but I have notes which will do just about as well.

Mr. WOOD. What was that, the demands of the union?

Mr. RORTY. Yes, the demand of the union was simply for the enforcement, in the Imperial Valley, of the settlement made by the Regional Labor Board following the strike in the Salinas Valley last year. George Creel was the chairman of the Regional Labor Board who negotiated that settlement. The same growers who operate in the Imperial Valley also operate in the Salinas Valley. They signed agreements with the union in the Salinas Valley, but they rejected any attempt of the same union, operating with a floating charter and, to a very considerable extent, the same workers previously working in Salinas Valley and moving to Imperial, to apply the same terms of settlement in Imperial Valley.

Mr. WOOD. What do you call a "floating charter"?

Mr. RORTY. A charter which is authorized to a union of the A. F. of L. to operate in this territory, or in any territory, depending upon the workers, the movement of the migratory workers. Is that clear?

Mr. WOOD. I never heard of a floating charter before.

Mr. RORTY. It is a term as it was described to me, and a term used——

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The CHAIRMAN. Have they officers and everything?

Mr. RORTY. They have an office in El Centro and they have an office, I presume, in Salinas Valley.

The CHAIRMAN. Do you mean that the charter is issued, say, to an organization of A. F. of L. workers in El Centro, and the charter gives them permission—if they move down to some other part of California, they still belong to the organization and it is all right for them to work there?

Mr. RORTY. Yes.

The CHAIRMAN. Like your steel workers, is it not?

Mr. WOOD. Yes, but the steel workers do not move around.

The CHAIRMAN. No, but your structural steel workers do.

Mr. SCHNEIDER. A steel worker moves constantly, and these workers move constantly, and do not stay in one place?

Mr. RORTY. Yes.

Mr. WOOD. They stay in different places; say a worker starts in at the Mexican border and continues on through the year until he gets to the northern part of California, and the charter goes along with him, and when he gets through up there, he moves on south again.

The CHAIRMAN. Does that not also apply to the structural steel workers?

Mr. WOOD. These fellows take their charter right with them from one place to another; it is not permanently fixed.

Mr. RORTY. I may add to the record certain pertinent data——

Mr. WOOD. They have permanent headquarters. They might get membership, but they cannot get a charter, because they have to have headquarters, establish headquarters, and you will find out their address at the roster of the American Federation of Labor, and the vegetable workers have a regularly constituted organization with officers, secretary and treasurer, and executive board, and they are stationary. The members can travel anywhere and retain their membership and have all of the rights and privileges and protection of the organization, or they can form new organizations in another locality, or they may become or form a subsidiary organization. The charter does not go, but it remains stationary at the headquarters of the organization.

Mr. RORTY. I wish to develop for the committee, first, the demands for which this A. F. of L. union was fighting, which was a scale of 75 cents an hour for packers, 70 cents for men trimmers, and 50 cents an hour for women trimmers. About one-third of the trimmers are women. The conditions of labor there were that they were demanding time and one-half for Sundays and holidays, and time and one-third if the time worked exceeded 13 hours. The statement is made by the union representative that their workday sometimes frequently ran as high as 16 or 17 or 18 hours.

The statement made by the union, which was closely checked by Captain Cunningham of the Department of Labor, claimed that the average earnings of the fruit laborer, which is not the individual wage but the family wage, would be about $600. Such contact as I had with the workers indicated that that would be putting it rather high, if anything.

They also demanded the elimination of the split bench, which is a form of speed-up in this processing work, which consists of employ-

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ing packers on piecework and trimmers on an hourly wage. The result is that the packers, who are skilled people and who can be driven up to pack as many as 35 crates of lettuce in an hour—remember, that means 60 or 80 heads of lettuce, iced, et cetera. You can see the type of speed-up that represents.

Mr. WOOD. I think the whole trouble is based on the effort of the workers to establish the Salinas wage in the Imperial Valley, is it?

Mr. RORTY. That is a question. Now, the circumstances——

Mr. WOOD. They are not asking for any more than they pay in the Salinas Valley, are they?

Mr. RORTY. That is right. They regard it as not an entirely satisfactory settlement, but enough to go on, and that was the full extent of their demands in the Imperial Valley, as they stated it to me.

Mr. WOOD. Mr. Chairman, I have got some more questions I want to ask.

Mr. SCHNEIDER. I had another question that I wanted to ask, Mr. Chairman.

The CHAIRMAN. Mr. Schneider wants to ask one other question.

Mr. SCHNEIDER. That is in connection with the workers: The organization, you say, are all members of the American Federation of Labor?

Mr. RORTY. Yes.

Mr. SCHNEIDER. Is there any other organization that is not affiliated with the American Federation of Labor?

Mr. RORTY. There was, as you probably know, an organization of Mexican field workers. That was an organization which vibrated, so to speak, back from the company union status to a more or less real status. That was taken over about a year ago, to a considerable extent, by the agricultural and cannery workers union, the active organizers of which are members of the Communist Party. Their attempt to organize in the Imperial Valley was met by a very aggressive, terroristic campaign, which is described in the Leonard-Lubin report and the Glassford report.

Mr. SCHNEIDER. You are talking about what happened last year?

Mr. RORTY. Yes; that was broken up pretty much, as far as I can observe, by the arrest and trial of 18 Communists—now reduced to 15, I think—at Sacramento, and that trial is now proceeding. That trial is on charges of criminal cyndicalism.

I would regard it pertinent to the inquiry of this committee to indicate the relationship of that condition, the present condition in Imperial Valley, and the present drive of the shippers and growers of California to secure those convictions in Sacramento. The control is held in a very small number of shippers-growers. The independent farmers in the Imperial Valley are handling about 20 percent of the acreage. I think that is subject to check by Government records.

Mr. SCHNEIDER. I am trying to get down to the point of where these workers who work in the fields is whether they are organized. What union do they belong to, and please state whether or not they are on strike now?

Mr. RORTY. They are not on strike, but it is my belief that they probably will be on strike, along with the processors, along with the shed workers, as soon as cantaloup time comes, which will be along

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in May. That, I believe, was the feeling expressed by not only the labor people in the valley but by the employers.

The reason that that strike will occur, in my belief, is the operation of complete terror in the Imperial Valley, which prevents any sort of organization which will direct—actually which waves the red flag, but, as a matter of fact, is directed with the general energy and the general type of organizations——

Mr. SCHNEIDER. What about the unemployment situation? Are there many people in the Imperial Valley, workers, now unemployed outside of the strikers?

Mr. RORTY. There is a very heavy labor pool in the Imperial Valley, because El Centro is on the main route of the transcontinental highway. The result is that you get the dispossessed Texas and Oklahoma share-croppers coming through in their broken-down machines all of the time, and you get the migration from Los Angeles and San Diego of dispossessed and destitute city people; you get Mexicans from across the border, many of them illegally. The history of repatriation and the history of the deported Mexican labor I cannot go into, because it is a long story and a serious condition.

What happens is that most of the forces of law and order are completely in the hands of the growers. Sheriff Ware is himself a pea grower and shipper. The chief of police is himself a lettuce grower and shipper. His brother, the head of the highway patrol, is also in the lettuce-shipping business.

The Anti-Communist League is made up largely of the middle-class people, such as automobile salesmen, bank clerks, druggists, whose lives and businesses are very closely interlocked with the power of the shippers; that is to say, if an automobile salesmen does not do the beating up and the other dirty work of the Anti-Communist League, then he is not able to survive in that town.

For example, it was strictly illegal, in my personal experience, for the man at the garage to permit the officers to go through my car, which he did do. For instance, the condition is so commonplace in the Imperial Valley that my expectation of legal treatment was at a minimum.

Mr. SCHNEIDER. That is all, Mr. Chairman.

Mr. WOOD. Well, now, I am going to ask you a question: How many organizations are established in that locality—how many types?

Mr. RORTY. Of labor organizations?

Mr. WOOD. Yes.

Mr. RORTY. There was organized last year a Mexican organization, labor organization of its workers, which was set up by the Mexican consul in Calexico and——

Mr. WOOD. I mean in this country?

Mr. RORTY. How many organizations of—what kind do you mean, labor organizations?

Mr. WOOD. Yes; those with the American Federation of Labor and those you term "radical" organizations.

Mr. RORTY. Where, in the Imperial Valley?

Mr. WOOD. Yes.

Mr. RORTY. In the Imperial Valley, so far as I know, there is no active organization being conducted except by the American Federation of Labor.

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Mr. WOOD. I cannot understand what is the reason for your position about the so-called "radical" workers—that is what you call them—radicals, and where you get the title?

Mr. RORTY. Yes, sir.

Mr. WOOD. The evidence you have adduced here convinces me that about the only organization, the only successful organization that has been done has been by the American Federation of Labor workers, and they have established unions in the Salinas Valley?

Mr. RORTY. That is right.

Mr. WOOD. And now, the whole trouble is based upon the effort in the Imperial Valley to establish like conditions in that valley?

Mr. RORTY. Yes.

Mr. WOOD. And the only virile, active organizing work that is being done, constructively, apparently, is done by the American Federation of Labor union?

Mr. RORTY. But may I supplement that?

Mr. WOOD. Now, I want to ask you this question: If there are any other organizations or any groups, who term themselves radical, what are they attempting to do in addition to what the American Federation of Labor has established in Salinas Valley in the way of wages, hours, working conditions, or anything else?

Mr. RORTY. The only organization which attempted and had any any beginning of success in organizing the steel workers, was the Agriculture and Cannery Workers Union, which is dominated by the Communist organization. The strike last year was a genuine strike. The American Federation of Labor does not interest itself in agricultural work. Its entrance into the field of food work or food labor is new.

Mr. WOOD. The American Federation of Labor enters into organization wherever it is possible.

Mr. RORTY. They regard the Mexican field workers in the Imperial Valley as impossible. Nevertheless, the conditions were so abominable that they did take an interest in that.

Mr. WOOD. What became of the organizers of the Communists in Imperial Valley?

Mr. RORTY. They are smashed to pieces.

Mr. WOOD. Why is it that they are not functioning now?

Mr. RORTY. Practically without exception, all of the leaders were arrested and now are being tried in Sacramento on charges of criminal syndicalism.

Mr. WOOD. Do you think that arrest and incarceration has stopped the growth of the American Federation of Labor; has it compelled them to cease their efforts whatever?

Mr. RORTY. The arrest and jailing of American Federation of Labor leaders has broken many a strike, and that is exactly what it did to the Mexican field workers in Imperial last year and in San Joaquin Valley.

Mr. WOOD. How did the American Federation of Labor get a foothold in Salinas Valley? The fact of the matter is, the owners are opposed to that kind of organization, or any kind of organization?

Mr. RORTY. That is right.

Mr. WOOD. Unless it is an organization of their own, that they can control. I have never yet heard, with all of the so-called

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"radicalism" that many individuals and organizations claim, where they have ever been successful in establishing permanent, beneficial conditions for the workers.

Mr. RORTY. I should say, unquestionably, that the bulk of the American labor that is organized, at all, is under the A. F. of L., and that the successful strikes of last year were under the A. F. of L.'s auspices.

Mr. WOOD. We had the I. W. W.'s, the Western Federation of Miners gave birth to the Industrial Workers of the World, and Bill Haywood and Pettybone were the heads of the Western Federation of Miners, and they gave birth to the idea of the Industrial Workers of the World. That has been a good many years ago; I think it was about in 1907 or 1908. The Industrial Workers of the World had a very good membership in the Rocky Mountain States. At one time they were a powerful organization, but they have passed out, as has all other types of organizations, practically all, except the American Federation of Labor, and the railroad brotherhoods, and other bona fide organizations who do not claim any extreme radicalism.

Mr. RORTY. Except the A. F. of L. is constantly struggling with the rank-and-file movement, which attempted to do the job when the official leadership fell down.

Mr. WOOD. Does it not occur to you that you ought to try to augment the force and power and influence of an organization that is a going organization, an organization that has proved itself through all of its agencies since the inception of trade unions in this country, to have represented intelligently the rank and file of all labor, and that are here now, to give proof of that?

Mr. RORTY. I would agree that the organizing should be done where the workers are and, by and large, are in A. F. of L. unions; but the A. F. of L. have been standing still because of the failure of the Government to enforce 7 (a). This bill, which is now being scheduled, will plug the holes in it.

Mr. WOOD. Yes; the American Federation of Labor movement has been subject to many defeats, but in spite of that, they are going on; and in Congress the voice of labor is considered the American Federation of Labor.

The reason why I ask you these questions is to bring out the point that the bona fide American Federation of Labor organizations down there are the ones that will survive; and, invariably, when the American labor movement, as represented by the American Federation of Labor, goes in and establishes working conditions, then other organizations, terming themselves as radical, come along; and I would say that they depend, for their existence, upon the bones of the pioneers of the bona fide labor movements, who have made sacrifices to make it possible for the movement to be here today.

Mr. RORTY. There are no A. F. of L. bones there, with respect to the Mexican field workers, in the Imperial Valley.

Mr. WOOD. I am talking about the American labor movement from the time the first organization was organized in this country. No one can gainsay that there is not plenty of bones left of the martyrs of the American Federation of Labor movement.

Mr. RORTY. That is quite true.

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Mr. WOOD. Anyone who knows anything about the labor movement at all will accept that. However, that is beside the point.

Mr. RORTY. I might enter for the record 2 or 3 points which I regard as highly pertinent to this inquiry.

My statement is that, with respect to the conditions of law and order in the Imperial Valley, that there is no such thing whatever; that the law-and-enforcement officials are controlled by and elected through the pressure of the shippers and growers who control the valley.

Back of them are personages, such as Harry Chandler, of Los Angeles, who has large holdings, both in Mexico and on the other side, in the valley. I am informed that Chester Moore, who is secretary of the Vegetable Growers Protective Association, is a personal appointee of Harry Chandler.

I am further informed that the growers were prepared to settle, and did settle, with the A. F. of L. union and the workers to the extent of about eight sheds in the early part of the strike. On Chester Moore's arrival the resistance of the shippers-growers was stiffened; and thereafter there ensued the arming of strike-breakers, who were armed with guns, who, if the grand-jury inquiry is anything but a farce, will be shown to be one man who was at least a professional killer; that the two strikers who were killed were killed entirely without warrant, when they were not armed and did not even have pick handles; that it was a provoked killing, with the object of inflaming the whole community, so that all legal picketing would be impossible, and the workers might be thrown in jail on any pretext, and 17 were thrown in jail.

That is the technique of defeating strikes as practiced in the Imperial Valley, the technique of preventing any investigation of striking conditions, which is shown by my own experience and the experience of others who have tried to go in there. That is fully substantiated by the report of General Glassford, who, while he was in the valley for 2 months, had his telephone line tapped, and was subject to continuous espionage. On his own statement to me, his telegrams were tampered with, and he and his wife were glad to get out of the valley. He was not able to communicate, except by disguise, with the labor commissioner in El Centro.

The labor commissioner is constantly in fear of his job, and the same thing applies to Captain Cunningham, who told me he did not expect to hold his job very long, because the shippers-growers were going to get him. I asked Glassford about that, whom I interviewed in Texas, and he said he had heard about it and he was afraid he could not save Cunningham's job for him. Cunningham had gathered statements which did not coincide with the shippers-growers' report.

That report I also want to introduce in the record. It is signed by C. B. Hutchinson, W. C. Jacobsen, and John Phillips. That report is, in my judgment, a complete, false whitewash of everything that happened in the Imperial Valley, and that is also the judgment of General Glassford. The reason such a report could be procured, in my belief, is because the Department of Agriculture of the State of California is dominated by Gianani, the banker, who, through the Gianani Corporation, which is a special endowment with close relationship to the University of California——

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The CHAIRMAN. Is this the whitewash report?

Mr. RORTY. That is the whitewash report, which bears no relation to the facts, but which shows the red flag in the Imperial Valley.

The CHAIRMAN. I do not think the committee wants that. We have got the Glassford report, and I do not think we need that report.

Is there anything else, Mr. Rorty?

Mr. RORTY. Unless the committee has further questions to ask me, I think I have detailed my own experience there sufficiently.

The CHAIRMAN. You have given some very valuable statements, and I think they will help to show the conditions not only in industry but among the growers and workers out there, and I think will be valuable to the membership of Congress to read it. If there are no further questions——

Mr. WOOD. Mr. Schneider asked a question awhile ago. He asked the gentleman if he made demand upon the authorities that he be permitted to stay and have protection——

Mr. RORTY. I made no such specific demand.

Mr. WOOD. He asked you if you made any such demand. I judge the reason why you did not make any demand was the fact that the authorities had already decided to deport you?

Mr. RORTY. They so stated.

Mr. WOOD. And you could not expect much protection if you stayed, because it was not their intention to protect you, but to deport you?

Mr. RORTY. They said they intended to deport me, and they said they were only waiting until they could get enough deputies together to give me an escort.

Mr. WOOD. Evidently, if you had stayed——

Mr. RORTY. If they had said, "Go out of jail", I would have had a fat chance of getting out of that valley without being beaten up.

Mr. MARCANTONIO. The fact that you went there voluntarily was evidence of the fact that you wanted to stay, if you could?

Mr. RORTY. Yes.

(Mr. Rorty submitted the following for the record:)

SAN ANTONIO, TEX., *March 4.*

Not until I arrived in San Antonio a few hours ago did I learn of the excitment caused by my arrest in El Centro and expulsion from the Imperial Valley. I am delighted at the prospect of a congressional investigation. In fact I am convinced that nothing short of such an investigation will, first, establish the facts; and, second, lead to the restoration of the Imperial Valley to the United States of America. Its present status is that of a feudal barony, ruled by a small group of grower-shippers. For all practical purposes the police, the sheriff, the courts, and the county administrative officials take their orders from this group, whose mouthpiece is Chester B. Moore, secretary of the Western Growers Protective Association. The orders are, in effect, that nothing and nobody count in the Imperial Valley except the big grower-shippers and their profits, which are sustained by the most degraded form of labor peonage I have encountered in a 5-month tour of the United States, with the possible exception of the onion weeders of McGuffey, Ohio.

Not only does this group dominate the forces of law and order, but it also mobilizes, controls, and gives orders to the various vigilante groups such as the Anti-Communist League, whose membership consists of automobile salesmen, bank clerks, and small business men, who are forced oftentimes against their will and inclination, to do the sadistic dirty work of the big shipper-growers, on pain of losing business or jobs.

I make this statement on the authority of Gen. Pelham D. Glassford, whom I interviewed in Phoenix, Ariz., the day following my expulsion from the

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Imperial Valley. Red-baiting in the Imperial Valley is a racket, known to be a racket by the grower-shippers who finance and direct it, and by the cheap middle-class bullies who do the kidnaping and beating-up in which the law-enforcement officers assist and connive.

General Glassford went into the Imperial Valley in April 1934 as special conciliator representing the United States Department of Labor, the United States Department of Agriculture, and the National Labor Board. At the conclusion of his investigation, in a report signed at Brawley, Calif, 14 miles north of El Centro on June 23, 1934, he wrote:

"After more than 2 months of observation and investigation in Imperial Valley, it is my conviction that a group of growers have exploited a Communist hysteria for the advancement of their own interests; that they have welcomed labor agitation, which they could brand as "red", as a means of sustaining supremacy by mob rule, thereby preserving what is so essential to their profits—cheap labor—that they have succeeded in drawing into their conspiracy certain county officials who have become the principal tools of their machine."

Coming from a former Army officer of high rank and a representative of the Federal Government, this is strong language Back of it lies the personal experience of General Glassford and his secretary, now Mrs. Glassford, during their 2 months' stay in the valley. Their telephone line was tapped. They had reason to believe that the confidence that is supposed to surround telegraphic communications by Western Union and Postal Telegraph was violated. During their brief stay in the valley they lived surrounded by an atmosphere of fear and of espionage. Few persons would talk; those who did insisted that they be not quoted. Those who wrote did not sign their communications. Mrs. Glassford told me that only after they had left the valley did she feel able to draw a free breath—this, from the assistant of a special investigator acting with the full authority of the Federal Government.

My stay in the valley was too brief to get the full flavor of this terror. But I saw and heard enough. Within a half hour of our arrival in town, I and my companion were approached in a restaurant by a drunken stool pigeon who assured us that if we stuck with him we would have a wonderful time—liquor, cheap women, and everything. I have reason to believe that my car, which was being repaired in a local garage, was rifled the day after we arrived in town. The morning after my arrival I interviewed Captain Cunningham, who shares offices with the National Reemployment Service in El Centro and who represents the United States Department of Labor. Captain Cunningham surmised that I was what is loosely described as a "red." I stated briefly and specifically whom I represented, what was my business in the valley, and the general nature of my political and social views, pointing out that the latter had nothing to do with the case, since my business in the valley was purely journalistic. Even if I had been a member of the Communist Party, reporting for the Daily Worker, I would have had a perfect right to enter the valley, interview a Government official, and expect him to answer frankly and accurately questions having to do with matters of public record.

Captain Cunningham, with whom I had two interviews, behaved as a decent Government official would normally be expected to behave. He gave me a variety of statistical information, practically all of which was strikingly at variance with that contributed by Chet Moore, secretary of the Western Growers' Protective Association. I suggest that the House Labor Committee summon Captain Cunningham and ask him to present all the information he has collected—I was permitted access to only a small part of it. I suggest further that Captain Cunningham be asked if it is true, as he intimated to me, that he is about to lose his job; why he thinks he is losing his job; who he thinks is getting him fired. I suggest, finally, that General Glassford be summoned and asked, among other things, why he apprehends, as he told me, that he won't be able to save Captain Cunningham his job.

I also urge that the House Labor Committee summon John B. Lestner, deputy commissioner of agriculture of the State of California, with offices in El Centro. In my opinion, which is shared by General Glassford, he knows more about the sources of the fantastic political corruption of the Imperial Valley than any other man; his records, if spread on the minutes of a congressional inquiry, would show that at the end of every harvest season his office is deluged with complaints by both shed and field workers having to do with the chiseling of bonuses to which they were properly entitled. From May

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to August, 90 percent of the claims filed in Lestner's office involve charges of chiseling by labor contractors. I urge, further, that Mr. Lestner be asked why, when General Glassford writes him, he uses his home address; also why the general suggested that if I write Lestner I use his home address and a plain envelop.

In the basement of the courthouse, immediately across the hall from Mr. Lestner, is the office of Deputy Agricultural Commissioner B. A. Harrigan. Concerning this tough perennial politician, General Glassford wrote in his report:

"Standing within the power of the board of supervisors is the removal from office of Mr. B. A. Harrigan, agricultural commissioner. In my opinion, he has not always made fair and impartial use of his powers. Several who claim to be victims of his tyranny and unfairness have come to me with their stories. Fearing reprisal, they have exacted my promise not to reveal their names of accusations."

Fearing reprisal. Every honest man in the Imperial Valley fears reprisal if he tells the truth about the peonage racket run by the grower-shippers and the red-baiting racket which serves as a smoke screen for their peonage racket. I feared reprisal myself while I was in jail at El Centro. Frankly, I was afraid Chet Moore was planning to frame me on criminal syndicalist charges, as in my opinion, the 16 Communist Party members and one member of the Workers' Party of the United States are likely to be framed and convicted at Sacramento.

When, after arresting me without warrant, rifling my personal possessions, fingerprinting me, "mugging me", and refusing me any opportuniuty to communicate with a lawyer or with friends, Sheriff Ware told me that I and my companion where to be escorted from the valley by his deputies; I said that I considered it advisable. I said this because I was confident that if we had been turned loose on the street we should have been almost instantly seized and probably beaten by the local vigilantes. In that sense, therefore, the police escort was furnished at our request. But the illegal deportation was the sheriff's idea.

I shall be glad to testify before the House Labor Committee concerning these and other things. I urge that my companion Charles Malemuth also be summoned, and asked particularly to testify concerning conditions in the El Centro jail, and the probability that several of its present inmates have been framed. Finally, I should be glad to return to the valley—with a company of marines, perhaps—and complete my investigations.

The CHAIRMAN. If there are no further questions, we thank you, Mr. Rorty. The committee will meet at 10 o'clock tomorrow morning and hear the representatives of the automotive industry.

(Thereupon at 1 p. m., the committee recessed until 10 a. m., Thursday, Mar. 14, 1935.)

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LABOR DISPUTES ACT

THURSDAY, MARCH 14, 1935

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

The committee met at 11 a. m., Hon. William J. Connery, Jr. (chairman) presiding.

The CHAIRMAN. The first witness will be Mr. Leonard Simms, the manager of the Industrial Department of the Detroit Board of Commerce.

STATEMENT OF LEONARD SIMMS, REPRESENTING THE DETROIT BOARD OF COMMERCE

Mr. SIMMS. Mr. Chairman and gentlemen of the committee, I came down to Washington in response to an invitation from Congressman Lesinski to testify with reference to the 30-hour week bill. I have my statement and a resolution prepared, which I should like to file with the committee, with respect to that bill, if I am not too late.

The CHAIRMAN. No; that is all right.

Mr. SIMMS. I understand that the hearings being had now refer to H. R. 6266 and not the 30-hour bill.

The CHAIRMAN. We have not had any hearings on the 30-hour-week bill at this session. We had them on the Connery bill for equal labor representation on the codes, and if the material you have would be pertinent to that, it could go into those hearings.

Mr. SIMMS. Shall I file it with the secretary?

The CHAIRMAN. Yes; if you will; or you may read it into the record.

Mr. SIMMS. There are before Congress two 30-hour work week bills; Black bill, S. 87, and Connery bill, H. R. 2746.

These measures are proposed as a panacea for the reemployment of approximately 10 million workers now out of jobs in the United States.

A comprehensive study of this proposed restriction of work hours shows many serious defects in the line of reasoning of its sponsors.

With these bills adopted and the 30-hour restriction in effect, there would be an increase in the cost of manufactured goods due to the fact that the reduction in working time would be effected without any decrease in wages; that the increased production costs would be passed on to the ultimate consumer—if the consumer would and could pay them.

With the average workmen and other individuals hard pressed at this time to meet the steady increase in the cost of food and other necessities of life, an added financial burden would be effective which would more than offset any gain made possible by the shortening of the work week.

The small businessman, who has been unable to secure adequate loans from the Government to meet the cost of materials and pay rolls, would even be in

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a more difficult position than heretofore. This would result from the fact that he would have to bear the burden of increased costs for some time before he would be able to pass them on to the consumer.

Furthermore the American workman, held to a minimum of 30 hours work per week, would, under present and mounting living costs, be unable to make an adequate wage for himself and family.

In the case of the automotive industry the 30-hour workweek would prove disastrous. This industry, which is leading in the fight for recovery, is meeting success by the offering of better cars at a lower price. If through the enactment of a shorter workweek more money must be paid out in wages, thereby increasing the cost of the product to the consumer, sales would be adversely affected in this country while export trade would be seriously crippled.

Your committee, in view of the foregoing circumstances, believes that these 30-hour work-week bills should be defeated.

And it is signed by E. S. Evans, chairman national legislative committee, and adopted by the board of directors, Detroit Board of Commerce, February 6, 1935, and relates to the Connery bill, H. R. 2746, the 30-hour work-week bill.

I would like to explain briefly the position adopted by those resolutions, and I would like to explain briefly the views of the board of directors.

It is felt that the expansion of production and volume of business is the only real way in which permanent recovery and reemployment will be achieved. Lasting improvement in employment cannot be raised by artificial or legislative shortening of hours of labor. That is a fact as proven by statistics from 1900 to 1930, when the hours of labor in industry, generally, declined approximately 10 per week, that being accomplished through improvements in productive methods and the like.

Mr. RAMSPECK. How much did the productivity of these men increase during that period?

Mr. SIMMS. The productivity of the men did increase substantially and sufficiently to permit the hours of labor to be curtailed and be paid on an approximately higher wage level, you might say. The standard of living increased, but it was due to the inventive genius of those who were making new machinery and new equipment.

Mr. RAMSPECK. Have you not got practically the same arguments being used now against the 30-hour week that were used against the 8-hour day, and were used against the 10-hour day when they had 12 hours?

Mr. SIMMS. Yes; that is true.

The CHAIRMAN. Answer me this question: There are 10,000,000 people out of work, at least, in the United States. How can Detroit sell automobiles, how can the men in St. Louis sell shoes, how can the farmers sell their produce, how can anybody sell anything, if you do not have the buying power in the American people?

Mr. SIMMS. I quite agree that you need that buying power, but if you curtail the hours of labor so that the masses have just enough to live on, and none of them have enough profit left above their ordinary living expenses to invest in consumer goods, or create more wealth, you cannot do it.

The CHAIRMAN. The Connery bill calls for the same wage to be paid for 30 hours as will be paid for 40 hours or 50 hours. You are not hurting your wage earners through the Connery bill, but you are going to pay them more because the costs of the goods they are manufacturing will go up.

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Mr. SIMMS. That is correct.

The CHAIRMAN. And we say that if you put three men to work where one man is working now, no matter how high your costs go, you are going to make it up five times at least in the buying power of the American consumer. How do you answer that?

Mr. SIMMS. We disagree with that theory of reasoning.

The CHAIRMAN. I have not been able to get that out of any manufacturer. For instance, the Arlington Mills, in Lawrence, Mass., had never paid a dividend for 10 years while they were under 48 hours, but when they went to 40 hours and put in the same hours as the southern mills they paid their first dividend in 10 years; and my argument is: That if they can do that on 40 hours they could pay better dividends then on 30 hours.

Mr. SIMMS. Except that the employees in that industry were not alone responsible for the consumption of goods produced by them, and their reduction of hours did not account for the entire increase in the sales of those goods, which enabled the company to make dividends perhaps. It has been said, with reference to the textile industries, that workers in that industry consume less than 1 percent of their total production of any particular commodity. How could one company, the employees of one company alone, account for the ability to pay dividends?

The CHAIRMAN. What about the other codes, where they put them under 40 hours and gave them increased wages? They gave the people the buying power to buy the textiles and——

Mr. SIMMS. As a matter of fact, the hours of employment in the industry for the last 4 or 5 or 6 years have been, in the majority of cases, under 40 hours per week.

The CHAIRMAN. I know, but no wages.

Mr. SIMMS. But no wages.

The CHAIRMAN. The buying power of the people is what we are trying to build up.

Mr. SIMMS. Of course, in Detroit we have a peculiar situation with reference to the wages, and we feel that the wages there have always been kept up at a goodly level. On the whole, the wages in Detroit and the Michigan concerns were not moved up appreciably by the codes because they were always up.

The CHAIRMAN. I do not want to take too much of your time, but I want to call your attention to the fact that the evidence before this committee in the last 2 or 3 weeks has shown that the tendency now—and that is from figures; it is not just out of the imagination—the tendency shows that the dividends paid by the big corporations of the United States, the big manufacturing corporations—that they are doing almost as well as they did in 1926, yet 11,000,000 people are out of work and going hungry. How do you account for that?

Mr. SIMMS. That may be true, but there are many, many companies that have lost tremendously in the last few years and have gone ahead and created new capital-goods markets by their investments for plant and equipment, in order to make new products, to try to bolster up the durable-goods markets and consumption and volume, so that they have not been making any great amount of money, many of them.

I can refer you to most of the automobile companies, and most all of the people out our way know, who had faith in the future, after

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they have taken years of losses, or, if not losses, meager profits, not enough to pay a reasonable return on the investment. They have still gone ahead each year and replaced machinery and equipment, adding to their plants and facilities, and have gone ahead on faith of the future markets of this country to absorb the automobiles, and they are being consumed now, but for years they took it on the chin, and I do not think the durable-goods industry is going to be helped a bit by this sort of legislation.

It might benefit the consumer-goods industry. Let us assume that it does. Still, I do not think the durable-goods industry, which has always during this depression been well below the level of 30 hours and has paid the wages, perhaps, that could be still paid for the same amount of work—still they do not add to their employment a bit, because they have not a market any more than that which is created by the companies that are willing to go ahead and, you might say, gamble on the future.

The CHAIRMAN. But it will have an effect if we put everybody else in general industry in America on a 30-hour week, so they can work in shifts in these factories. Then you would find that there are in Detroit people who could buy your automobiles, but you cannot find them now, because they can never buy your automobiles under the present wages of the United States.

I have got perhaps 10 or 15 families right on my own street who work for the General Electric Co. or work in the shoe factories in Lynn, and if they got wages high enough they would be glad to buy automobiles, all right, but they never will be able to buy them until they get wages so they can buy them.

Mr. SIMMS. Take the argument of increased cost that you brought up a moment ago, and you will have a great tendency to reduce the real wages that count. It is not the dollar you get paid out on the 30 hours per week, it is the real regular wage you get. By that I mean the wage in relation to the prices of the necessities of life, and if those are increased so tremendously, as they are now increased, the farmer's commodities prices are bound to increase in the near future. That is a demonstrated policy. If those increased costs mount more rapidly, how is the man in Lynn going to buy or continue to buy the same quantity or quality of goods?

The CHAIRMAN. We do not care in Lynn whether butter is 40 cents a pound or not, if a man has 60 cents to buy the 40-cent butter with; but now butter is 40 cents a pound and a man has only 30 cents or 20 cents to buy the butter with, that is what hurts. We claim that neither the farmer nor industry can be prosperous one without the other.

Mr. SIMMS. That is correct, but you are going to widen the breach between the price the farmer gets for his commodities and the prices that the manufacturers get for their commodity.

The CHAIRMAN. We have testimony in here that the tobacco people, those who make the cigarettes, made $779,000,000 in profits in 10 years and——

Mr. SIMMS. Yes; I believe that.

The CHAIRMAN. And the labor cost is 2 percent. How would you answer that? Would you say you must not make them bring up their wages and give the buying power to the people?

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Mr. SIMMS. I am not familiar with the tobacco industry, but I should say that, if the profits were that extensive, it might be said that the farmers, who have not received commodity prices generally or relatively as good as the manufacturer's prices in the last few years, that they might be entitled to a greater share for their crops that go into that tobacco.

The CHAIRMAN. That is all this committee is trying to do. We are not trying to destroy industry, to take away the profits from the manufacturers, because that would be nonsensical.

We can see the trend from the testimony we get here that prosperity is coming back, and there is probably going to be the greatest prosperity the country has ever known, and the trend of the testimony shows that when it comes, the rich are going to be richer than they were, and the poor are going to be poorer than they were, and we do not want that. We would like to see the poor get some decent wages.

Mr. SIMMS. I cannot agree that legislative restriction on the hours will accomplish the purpose of adding to employment. We had the share-the-work movement a few years ago under President Hoover. At that time the laboring man and everybody else was in the doldrums, and the depression was getting more and more intense. Naturally, those laboring men, and everyone else, were willing to take half a loaf, rather than no loaf; but, today, I do not think you will find any employees in the plants who would like to share their labor with others.

The CHAIRMAN. Listen. As far as this is politically concerned, it cost me 3,500 votes in my primary up in Lawrence to stay with the 30-hour week, and the votes against me came from the mill workers for whom I am trying to get decent wages.

Now, let me ask you, and I do not want you to be sensitive about it, but have you read the Connery bill?

Mr. SIMMS. The 30-hour week bill?

The CHAIRMAN. Yes.

Mr. SIMMS. Yes; I have read it.

The CHAIRMAN. What does it call for?

Mr. SIMMS. It calls for a reduction of hours to 30 a week at the same wages now paid for a week of——

The CHAIRMAN. And what else?

Mr. SIMMS. It provides for exemption from those provisions, by Executive order in the codes—provides for a suitable arrangement in lieu of that provision, and in cases of emergency, when there is a shortage of labor of the skilled type, it provides that the industry may violate the law, so to speak, and have sanction to violate the law. That is the substance of the provision.

The CHAIRMAN. You know more about it than any of the other men who represent manufacturers that have appeared here.

However, if I remember rightly, there is nothing that refers particularly to a shortage of labor—I mean the Connery bill, a bill of this kind?

Mr. SIMMS. Yes.

The CHAIRMAN. This bill was drawn up by Mr. Donald Richberg, and it was agreed to by Miss Perkins and President Green, of the American Federation of Labor, and me; that is, it was agreed on in

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this way: Of course, Mr. Green and I agreed on it entirely, and Mr. Richberg and Miss Perkins agreed, if that 30-hour bill—that is, if any 30-hour bill should come out—that was the kind of 30-hour week bill that they should support.

Note well that a bill of this particular type means that when employment goes down in a particular factory so that it would cause unemployment in factories, it might go on to a 30-hour week; it means that, if it means a loss to them in competition with any of their competitors by going on the 30-hour week, they would be permitted longer hours. It means that, if there was one factory in a town that employed 600 people and that was the only factory in that town, and by going to 30 hours a week they could not compete with the other manufacturers, they would be permitted longer hours.

In other words, the bill is absolutely flexible, and it starts off with the premise that everybody in industry should go on a 30-hour week. If all that has been told us is true, that it would cause unemployment, would cause hardship, or would hurt any business, they can be exempted from it up to 40 hours. They are on 40 hours now.

I have met the manufacturers and said, "Have you read the bill?" And they have said, "No." I said, "What do you think it does?" One of them said, "It puts a man's factory on 30 hours a week." They do not know. I have found out they do not know what is in the bill.

But, proceed, now.

Mr. RAMSPECK. As I understand his position, it is this: You can, for instance, go on 30 hours a week and increase the labor costs 25 percent, if you are now on 40 hours?

Mr. SIMMS. Yes.

Mr. RAMSPECK. And that will be paying the same wage to each individual employee. Therefore his income is not increased but his working hours are reduced. Your argument is that the cost of living to him will be increased 25 percent, and therefore his real wages will be reduced 25 percent?

Mr. SIMMS. That is correct. I do not think you can necessarily consider the wage alone, but I think you have to consider it in relation to the commodities that he must have on which to live.

The CHAIRMAN. Now, here he is working 40 hours a week or 48 hours and getting $25 a week. Prices are going up just the same. So, in other words, he is going to work 40 hours, and we want him to work 30 hours for the same money.

Mr. SIMMS. I would not say he is better off, but still there is going to be a tendency to reduce wages to the N. R. A. code levels if you reduce the hours to 30.

The CHAIRMAN. How do you mean? The bill would call for the same wages to be paid for 30 hours that he is getting for 40 hours.

Mr. SIMMS. I would venture to predict, if this bill has a chance of passing, within 2 weeks from now, after signature by the President, all down the line of industry there would be a material reduction of wages down to the code level.

The CHAIRMAN. In that case, you would come right back to the point where the labor men have said that the only alternative is to forget about the codes and go back to the old system of strikes, because if the manufacturers showed that their spirit or intention

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was not to go along with the Government, but cut right down, that they are heading for industrial trouble.

Mr. SIMMS. I say the tendency would be to do that. In that connection, I reiterate the statement I made earlier that, especially in Michigan, the industry there, the automobile industry notably, has not reduced its wages to the code levels.

The CHAIRMAN. You mean to the minimum?

Mr. SIMMS. To the minimum; yes.

The CHAIRMAN. But they have made the minimum wage the maximum wage, have they not?

Mr. SIMMS. No; that is not true. That is not true. I do not think that is completely true. It may be 50 percent true, but a goodly number of our employees in the Michigan industries are getting substantially above the minimums provided by the codes, and always have. The employers, I now believe, from long association with them, are willing to give their workers every cent they can. They realize they have to spend money in order to create markets, and any commodity must be sold to the person who has a profit above his expenses. Therefore, they want to set the example themselves.

Mr. RAMSPECK. I want to get back to this question of improved machinery that you mentioned in the beginning of the hearing, if I am correctly informed. Suppose we take 1929, we will say, as a normal year of employment. If, by improved machinery, the production or productivity of a particular man is increased 33⅓ percent since 1929, which I am informed is the situation in the automobile industry, then wages should be increased in the same proportion, should they not?

Mr. SIMMS. I cannot agree with that 33⅓ percent figure. I do not have any facts to back me up on that.

Mr. RAMSPECK. Suppose we take, for the sake of the argument, that figure and grant that it is right; is it not true that employment ought to be increased in proportion? Wages have not increased in proportion with the increased productivity per man, have they?

Mr. SIMM. I think that is true; yes.

Mr. RAMSPECK. What is the ultimate end of it? Is not the ultimate end that, eventually, we are going to have the machines doing all of the work and nobody working?

Mr. SIMMS. I do not believe so. There is always a lag between the increase in productivity of equipment and increase in wages. I can cite myself as an example of that, because I am doing the work of four men now. That is, in 1929 I had three assistants that I do not have at the present time. I am getting no more salary than I did then; in fact, a lot less. Business is much slower with us, we will say, and I am working longer and harder than I was in 1929, and I think it is the same with everyone in every line of endeavor.

Mr. RAMSPECK. That is true, generally, in the chambers of commerce, but I am talking particularly about factories. There has been a tendency, for 20 years or more, to increase the productivity of employees through improved machinery, and the major portion of gain derived from that improved machinery has gone to the management and to the stockholders, and we all know that that money does not go back into circulation in the same proportion as it would if it were paid to the employees; is not that true?

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Mr. SIMMS. Well, it goes back into the durable goods, in the case of the automobile industry, the very industry that the Congress and the administration is trying to bolster up.

Mr. RAMSPECK. Is it true, Mr. Witness, that that happens? Do not the dividends that go to the stockholders in the automobile industry go into investment and not into expenditures?

Mr. SIMMS. Well, I do not believe that a great portion of it goes into savings accounts and investments, after all, but the stockholders who receive the investments or dividends from corporations are in the nature of loans to the particular industries to carry on their production, and by their production to create the market and consumption of those goods and pay labor.

I certainly think that Mr. Average Man, the fellow like myself, perhaps, who is getting less than $10,000 a year, but more than $3,000 a year, and who holds 50 shares of this stock and 50 shares of that stock, when he gets his dividends, he reinvests them, of course.

Mr. RAMSPECK. Yes; but that does not produce employment. That is the point I am getting at, exactly.

Mr. SIMMS. Reinvestment is essential if the company involved needs capital to go ahead with.

Mr. RAMSPECK. Yes; to invest in more machinery to put more people out of work, and what is the ultimate answer? I do not know the answer. I am asking you.

Mr. SIMMS. Well, there is such a thing as a Utopia, where everybody will have enough to live on and not do any work, but it is far in the future, and I do not venture to prophesy when it will come about.

Mr. RAMSPECK. I am not in favor of nobody doing any work.

Mr. SIMMS. I quite agree with the theory that no one should be absolutely idle. I have always been told, even from childhood, that too much leisure was a bad thing.

The CHAIRMAN. Might I inform the committee, for their own benefit, that Mr. Lesinski has four or five witnesses here today, and we would like to make it as brief as we can, because tomorrow we have an executive session on two Senate bills.

Mr. Schneider, you wanted to ask a question?

Mr. SCHNEIDER. Yes; I just wanted to ask the witness if he represented the automobile industry solely?

Mr. SIMMS. No; I do not. I represent the Detroit Board of Commerce.

Mr. LESINSKI. Will you state who are the membership of the board of commerce?

Mr. SIMMS. The Board of Commerce, the members of the Board of Commerce include the manufacturing concerns, individuals, and all professional men, and all business and commercial houses in the city of Detroit, and some outside of the city.

Mr. SCHNEIDER. My purpose in asking the question was that you stated or intimated that most manufacturers paid over the code wages covering their industries.

Mr. SIMMS. I think that that is a fair statement; yes.

Mr. SCHNEIDER. Have you any records to substantiate that with?

Mr. SIMMS. I have not with me. I may be able to produce some.

Mr. SCHNEIDER. You are speaking now of just the minimums; that is, the codes provide only the minimums.

Mr. SIMMS. Yes.

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Mr. SCHNEIDER. Now, of course, these reductions in wages that take place are not usually below the minimums, but they are bringing the skilled man, who is not on any minimum, down to the minimum constantly; and when you say that a manufacturer will reduce wages, he will reduce the higher man down to the minimum and not below the minimum, and finally they will all be on the minimum. That is what is taking place in industry now, and I am not speaking of the automobile industry especially.

Mr. SIMMS. You are speaking generally?

Mr. SCHNEIDER. I am speaking generally, and I am sure the N. R. A. officials will testify that the great majority of all of the industries in America are not paying more than the minimum, unless their workers are organized and force them to pay more than the minimum.

Mr. SIMMS. That may be so, taking industry by and large but I do not think that is so in our State with the great majority of our industry.

The CHAIRMAN. Mr. Simms, would you like to go on now to the Wagner-Connery bill?

Mr. SIMMS. Yes; I would. I might say, Mr. Chairman that I have read this bill word for word, but this morning I thought that the presentation would be in reference to the 30-hour-week bill. For that reason, I should like to reserve the right to file a written statement in respect to this bill later on.

The CHAIRMAN. That will be all right.

Mr. SIMMS. There are one or two points I want to mention in connection with this bill.

Section 8, paragraph 3, provides that it shall be an unfair labor practice for an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization:

Provided, That nothing in this Act, or in the National Industrial Recovery Act, shall preclude any employer from making an agreement with a labor organization, to require as a condition of employment membership therein, if such labor organization is the representative of the majority of the employees in the appropriate collective bargaining unit covered by such agreement when made.

I wish to mention that, on the record, as being one thing that tends toward restriction on the freedom of a man to work for a company, unless he is employed—or rather a member of the organization that represents the majority of the employees.

I do not wish to argue the point now, but I think that is one of the things that would be considered in our statement.

The CHAIRMAN. Well, of course, in there, that would allow a concern or employer to make an agreement with the union; and if so, that would be a closed shop.

Mr. SIMMS. Yes, it is permissive; I understand that.

The CHAIRMAN. But if the employer did not want to agree to that, it would have to be a closed shop. There is another paragraph there that says the minority can come with their grievances to their employer.

Mr. SIMMS. I read now partially from section 9:

Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment,

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And so on.

The CHAIRMAN. Then it says—

Provided, That any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing.

Mr. SIMMS. That is correct, but following that, in paragraph (b) it says—

The Board shall decide whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employee unit, craft unit, plant unit, or other unit;

and that all leads up to the very point I make. Now, the union that represents the majority of the employees has the right of recourse to this Board, but would the other employees, or those who represent the minority group within the industry, have recourse to the Board, or only to the employers?

The CHAIRMAN. Of course, the entire purpose of this bill is to do away with company unions. There is no doubt about that, because we feel—Senator Wagner and I feel that they are given a very unfair advantage. Take, for instance, the telephone companies. They had a code hearing in this building last year and brought down some 30 or 40 girls from Boston, paid their expenses, put them up at the best hotels, paid all of their expenses and entertainment, and they brought them down solely for the purpose of breaking up what we call a legitimate union of the telephone operators, girls who out of their own pay had paid the expenses of their delegates to come down here and demand decent wages and demand certain conditions in their industry.

Now if you permit company unions to be formed—suppose it is a 60–40 proposition—you take 40 percent of those people and say to them, "Well, we are going to give you time off during the day to go around the plant and propagandize for a company union; we are going to give you outings and picnics", and if you do that, in a short time you have got your other union broke up and you have no real free voice of the employees in that plant, or their right to belong to the union.

For instance, they had an election in the General Electric Co., and I talked with Mr. Swope, and I said, "Mr. Swope, if you organize the employees there and give them a chance to vote in secret, use the Australian ballot, they will knock out your company union 2 to 1."

He said, "I think you are wrong, Mr. Connery. They want that plan of representation. They like it, they like what we have got."

So they had an election under the Labor Board. They voted under the Australian ballot and beat that plan of representation 2 to 1. When they are given a right to vote as American citizens, regardless of the coercion or influence of the employers, they will go along.

Now, this bill does not provide that if, in General Motors or the Ford plant, 60 percent of those people want to be in a company union, they are the ones to be considered, are they not?

Mr. SIMS. Yes.

The CHAIRMAN. Well, what are they kicking about? All we want is a fair election and if the employees of any plant want to be represented by the American Federation of Labor organization, or a company union, or any other independent union, if 60 percent of them, or only 51 percent of them vote for it, they ought to get it.

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Mr. SIMS. As I say, I have just read the bill over, but this bill seems to me to be giving the National Labor Relations Board quite sweeping powers with reference to the designation of what unit shall be the one.

The CHAIRMAN. All right, from your experience with the National Labor Relations Board, what have they done in each instance? They have gone into every plant and said, "We want an election and we want it under the Australian ballot. We want it a secret ballot, and let the workers say their say." That is all they have done, and that is all they do in this bill.

Mr. SIMS. In this connection I might read, briefly, from an editorial in the Detroiter. The Detroiter is the official publication of the Board of Commerce, a weekly, and it says:

> Since workmen were empowered to name leaders of their own choosing under Section 7A of the N. I. R. A. only 1,847 Detroit employees have indicated their affiliation with the American Federation of Labor.
>
> That is 4.8 percent of the total number of votes cast so far, which was 38,336. There were approximately 42,500 eligible to vote, and about 4,000 declined the privilege. Voids and blanks found in the ballot boxes numbered 1,237.
>
> Bending backward in giving the A. F. L. credit for their 1,847 votes, plus all voids and blanks, and for influencing 4,000 not to vote, we find that more than 80 percent of our workers have renounced the kind of leadership offered by the Federation.

The CHAIRMAN. Was there ever an election that the Federation asked them not to vote in?

Mr. SIMS. I do not recall that.

The CHAIRMAN. I remember seeing in a paper where the Federation, in one of your elections, said they did not want any man to vote, because they knew they would be put on the spot and fired.

Mr. SIMS. Well, I do not think that is true.

The CHAIRMAN. You understand, in talking to this committee, this committee has no brief particularly for the American Federation of Labor, but we are a congressional committee in dealing with all groups.

Mr. SIMS. That is right, and I just read that to bring out this point: If it is put in there as a designation by the National Labor Relations Board of the union, or company union, or the Federation of Labor, or what not, which is to be the union to bargain collectively with the employers and to operate, according to law, if it represents only 10 percent, we will say, and four other unions within the plant represent 10 percent each—that is 50 percent of your employees—and the company union represents 30 percent, we will say, making 80 percent, and 20 percent do not care—in that event, I think that the law should be specific to require the National Labor Relations Board to appoint that union which has the greatest number of members for the purpose of collective bargaining.

The CHAIRMAN. Is not that what they probably would do, as sensible men, anyway?

Mr. SIMS. Probably; but let us have it in the law, if we can.

That is all I have, Mr. Chairman.

The CHAIRMAN. I would like you to get the background of our views on this thing. I have been informed that representatives of manufacturers come in here, and representatives of chambers of commerce, and feel that this committee is antimanufacturer, and we are

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not. Here is what we are after in general: We have had a lot of testimony here in 4 years, you know, on the 30-hour law. We had all of the big leaders of industry in the United States and all of the big labor leaders. We had Communists; we had everything of the social strata of the labor movement in the United States.

Now, speaking for myself, I feel that the employers of the United States are very short-sighted, very short-sighted. I figure that the United States is sitting on a volcano, today, and the employers of the United States are on a volcano.

Men who 3 or 4 years ago were what you would call "conservative" workingmen of the United States, who were only interested in getting their pay envelops and bringing them home, and taking care of their families—if you said "Communist" to one of them or "red" or "radical", or anything like that, he would want to kill you.

That man, with five children and not an awful lot to eat in the house, or who may be under the E. R. A. or anything else—his pride is hurt if he has to go to the E. R. A., because it is charity to him, but he does not have enough money to take care of his children in illness and everything that goes with family life—that man is in a different frame of mind than he was 4 years ago. Now, the radicals may come in and say, "Here is what the concern I referred to paid, $779,000,000 in 10 years; and Andrew Mellon, $93,000,000 income; and your children are going hungry and you cannot educate your children."

Multiply that by 10 or 12 million people in the United States, and you have got a very dangerous situation. What we have tried to do is to get the manufacturers and employers of the United States to see that they are sitting on this volcano. We are trying to be fair with them and be fair with labor. If our efforts do not succeed, to my mind, you are in for a lot of trouble and bloodshed and industrial strife in the United States.

That is the background of this committee.

But your main objection, then, to this bill is on that proposition of the National Labor Relations Board—is not being specifically set out in the bill which way it will work?

Mr. SIMMS. Not by specifically providing that all employees, whether in or out of the union, may have recourse to the employers and the Board.

The CHAIRMAN. Well, now, you start off with the proposition——

Mr. SIMMS. At the outset, I must say that I believe that the position will be—after further consideration by the board of commerce, there will be opposition to this bill.

The CHAIRMAN. You and I will start off with the premise that every manufacturer, unless he is different from 99 percent of them, would prefer no labor union at all; that he would prefer to deal with his employees and say, "I will pay you $8 a week, if you want to take it. Do you want it or not?"

That is the way the manufacturers would like to deal with their labor; and labor found out that in order to get decent wages they had to combine.

We do not believe in labor's taking over industry, or anything like that, as the papers come out every once in a while and say that labor is running the United States. We do not want that. All we want

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is a decent wage and decent living conditions for the people. But, in general, that is your position with reference to the bill; is there anything else in it?

Mr. SIMMS. Well, I do not want to say at this time, because I have just read it this morning. That concludes my statement.

Mr. LESINSKI. I have a question to ask Mr. Simms. I personally believe that the board of commerce and manufacturers and employers in Detroit are working for the benefit—to better their workingmen. Besides, I believe that they attempt to employ people who have resided in the city for a long time.

Why is it that employers in the city of Detroit alone, and not in the vicinity, allow approximately 1,500 commuters daily to come into Detroit and employ them, instead of employing residents of Detroit and take those people off of welfare?

Mr. SIMMS. Well, I understand there is a bill in Congress now to correct that.

Mr. LESINSKI. That is true, but I happen to have a list, and it happens to be the members of the Detroit Board of Commerce, of people who employ Canadian labor: Burroughs Adding Machine, about 20; Crowley, about 20; the Detroit Edison Co., about 30; some of the newspapers employ Canadian labor; J. L. Hudson Co., about 60; the Grand Trunk Railroad, about 50. You take the list of the J. L. Hudson employees and you will find practically a page of them. You will find Parke-Davis in here and the Michigan Bell Telephone Co. The Michigan Central Railroad and Parke-Davis—they all employ Canadian labor instead of employing American labor.

Mr. SIMMS. Of course, all of those concerns that you have mentioned are large employers, and the percentage of their total employees is small.

I hold no brief for the commuter to work. I have not any particular argument for or against this thing you bring up, because I have not given it any great consideration. I should say that this organization I represent, and the members of it, have over a period of years advocated and, I believe, done whatever possible; that they have, wherever possible, employed first the Detroit people, whenever the employment market will support the taking on of other employees who have long been residents of Detroit and do not go out of town to get employees. Now, this practice is a hold-over from the days when there was practically no immigration restriction at any part of the border between the United States and Canada. I do not think you will find these companies today hiring new men in those positions where they have vacancies. This has grown up over a long period of time.

Mr. LESINSKI. You take in Detroit, with 60,000 or 70,000 families on the relief rolls, and probably months going by without them having employment; if they cannot find capable people to fill those positions, I am wrong.

Mr. SIMMS. I presume in most cases they can find capable people.

Mr. LESINSKI. Isn't it a fact that there are many department stores doing business between the people in Canada and the United States, by carrying goods across, because they are sold cheaper, especially silk goods in Detroit, than they are in Canada?

Mr. SIMMS. Well, of course, if they take the goods from Detroit to Canada, they are subject to duty.

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Mr. LESINSKI. Not if they carry it on themselves, like they do, as a rule.

Mr. SIMMS. I was going to mention that while I was in high school I worked on Saturdays for a dry-goods or clothing store in Port Huron, Mich., which is across from Sarnia—you know where it is—and it was by no means an uncommon occurrence for a person from Sarnia to come into the store with his family on Saturday afternoon and buy some blue-denim work shirts—maybe two or three shirts—and ask if he could not have a few moments of privacy to put those shirts around the back of his coat or vest, somewhere, so as to hide them from the customs officers. And on the same basis, a man goes to Canada and can bring back within 30 days—at least once every 30 days—up to $100 worth of Canadian merchandise. This situation that you mention works both ways. There are Detroit workers employed in Canada——

Mr. LESINSKI. Very few.

Mr. SIMMS. Perhaps a few, but there are a few Canadians coming over here to purchase our goods in comparison with the United States residents going to Canada to purchase Canadian goods.

Mr. LESINSKI. As long as the border commuters continue in Detroit, you will find that trouble. There was an incident, 2 years ago, in one of the automobile plants in Canada, when some power mechanism went out of kelter one day. They sent an engineer from Detroit, and they stopped him on the border and would not allow him to go in, and told the concern that they must employ Canadian labor, and they had to shut the plant down a week to get a man from Montreal. If that happened in Detroit, they would allow the man to go through.

You will find the same conditions on your railroads. You will find that the man whose territory stops at the border in Detroit—there may be a train that he has pulled through to Windsor or to Ford City, and he is stopped on the border and a Canadian crew put on for those 3 miles. Yet their man comes into Detroit and goes as far as Lansing, or as far as Chicago, if that is within the territory, but they will not allow American labor to get over on the Canadian side.

The same thing applies to employment in the stores. I know that the people in Detroit have kicked on it. There are ample people in Detroit that can fill these positions, yet most of these employers insist on hiring Canadian labor, and there is one reason for it, because it is cheaper to live in Canada and they can get that labor cheaper than they can get Detroit labor; and I think the board of commerce, as the outstanding organization in Detroit, should stop that kind of commuting.

Mr. SIMMS. Do you not think a fairer criticism of that could be made by the immigration authorities? Now, speaking of trade between the two countries, or right across the border, that is a matter for the President's Committee on Reciprocal Trade Agreements to consider, and they are now negotiating with Canada, and it seems that these differences that exist between the two countries, with respect to the border trade and border commuting for employees, could be handled in that way.

As I said before, I hold no brief for the employment of such labor, nor do I hold any brief for commuting, but I must admit that I have

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not studied the bill in Congress sufficiently to form any position—to know what the position of the organization will be on it.

The CHAIRMAN. The chamber of commerce in any city is supposed to represent the best interests of the entire city, is it not?

Mr. SIMMS. Yes.

The CHAIRMAN. Supposed to look out for the people in that city?

Mr. SIMMS. Yes.

The CHAIRMAN. If you tell them, "Don't go to Lansing and trade, stay in Detroit, we will furnish you the best goods"——

Mr. SIMMS. Yes; they could tell them that.

The CHAIRMAN. Why is it up to the United States Government to stop the employers of Detroit from going over to Windsor and bringing back cheap labor?

Mr. SIMMS. I do not know that they bring over cheap labor.

The CHAIRMAN. Bring over any labor, then?

Mr. SIMMS. I do not know that the Canadian Government would permit a Detroiter to go to Canada to work in such great numbers, as it is an immigration matter; it is not a Board of Commerce matter.

The CHAIRMAN. All of these manufacturers are in your board of commerce. Why did they not sit around the table and say, "For the best interests of the city of Detroit, we will not hire Canadian labor"?

Mr. SIMMS. I think the tendency is along that line. A few years ago, perhaps in 1929, we did consider this matter in the committee, and there was a statement more along that line, that they would cut down as rapidly as possible. These people who are personally employed may be, with one exception or some in the stores, skilled employees who have been with the company for 20 or 30 or 40 years, and they do not want to say, "Well, here, you live in Canada, you cannot work any more." The borders are not that big; they are not that strong.

Mr. LESINSKI. You admit that salesladies are not skilled labor?

Mr. SIMMS. No.

Mr. LESINSKI. It happens to be mostly salesladies in the Hudson Co., and the other stores.

The CHAIRMAN. We thank you very much, Mr. Simms.

The next witness will be William E. Dennison, of the Society of Designing Engineers of Detroit.

STATEMENT OF WILLIAM E. DENNISON, REPRESENTING THE SOCIETY OF DESIGNING ENGINEERS, DETROIT, MICH.

Mr. DENNISON. Mr. Chairman and gentlemen of the committee—could you tell me, Mr. Chairman, about how much time I should take? I have a brief here and I had some notes that I would like to cover all of the subjects that are properly pertinent to this matter.

The CHAIRMAN. I might suggest—you do not have to do it, but it has been the custom often in the past—if you have a brief, all right, you can put it into the record and let the committee ask you questions and elaborate as you go along, because the committee will read every word of the hearings. If you prefer to read your brief, you can do it.

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Mr. DENNISON. Unfortunately, I was a little pressed for time and have a part of the brief, and I will give part of the items that I wish to talk about.

To start with, I might mention the organization that I am here representing, who we are, what we are advocating, what we are doing. I want this committee to have a clear picture of what work the engineers and designers of Detroit perform.

My name is William E. Dennison. I am a resident of Detroit, Mich., and I am appearing before your committee as a representative of the Society of Designing Engineers, a society of mechanical engineers, namely, 2,000 members distributed for the most part in Detroit, Pontiac, Flint, and Jackson, Mich., and Toledo, Ohio. The greater part of our membership are at this time employed in some branch of the automobile industry. In the city of Detroit, there are 850 members engaged in designing tools, dies, and special machinery, and 350, approximately, designing motors, bodies, and chassis of automobiles.

Part of our membership is in the automobile industry, but we also branch out into refrigeration and other industries that seem to be around about Detroit. About 350 of our city of Detroit members are engaged in designing motors, bodies, and chassis of automobiles. The greater part of our membership then, are engaged in the part of the automotive industry that comes under the Automobile Code, Special Tool, Die and Machine Code, and Auto Parts Manufacturing Code.

We feel that the part these men play in industry is an important one. Our members design the product, design and select the machinery for the plant, make the plant lay-out for placing the machinery, design the special machines, tools, dies, gages, and small tools. The knowledge required to engage in this occupation is great, and we are continually faced with an ever-broadening scope. We are the men who have designed these machines and tools that have been the instruments of mass production that has made the United States the leading mass production country of the world. We have played a leading part in the development of our country and in bringing to its maturity the machine age. The departments of the plant in which we work are the central planning departments.

We feel that since our members design the product, that is, the automobiles or the cash registers or the Frigidaires, or whatnot, and design and manufacture the machinery for the plant—we do design the machines and the tools for producing automobiles, we make the plant lay-out or plan the machinery in the plant, design special machines, that is, those that are not standard, such as the milling machines, lathes, shapes, and so on, which are special, such as, for instance, cylinder-boring machines for Ford motors, the V-8 motor, and also the small tools—we feel that the knowledge required to engage in this occupation that continuously has entirely broadened the scope of our employment and our knowledge, and in order to keep up with that, we must continuously be engaged in studies and research work. As I say, the departments of the plants we work in are the central planning departments, and I mention that, gentlemen, so that when we speak of automobile manufacturing and

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other manufacturing, we are the men that the automobile companies rely upon to do their work for them, to develop their technique.

There are several other things that this committee might possibly be interested in. Upon the ability of the group that I represent depends to some extent America's ability to compete with foreign countries. We represent a strata of American citizenship which has gone ahead and done more than any other group to develop the technique of the country.

It would seem that from the vital importance of the work we do that we would be well rewarded for our contribution to the social well-being of our people, but this is not so. During these years, when we have been developing these machines that have provided a constantly changing and greater production of wealth at a lower and lower cost, we have been faced with a constantly lower and lower standard of living. In fact, our condition has become so wretched that we are in many ways paid less than unskilled labor.

In speaking of labor as a whole, in this connection I wsh to offer for the record here a very significant chart. This is from a newspaper called "Labor", published here in Washington, D. C., by the railroad brotherhoods and 26 affiliated shop crafts, and it has a chart here which is very significant.

In 1849 the workers' share of the national production of wealth was 51 percent, and that of capital was 49 percent. In 1919 the workers' share of this annual production of wealth was 42 percent, while that of capital was 58 percent. In 1933 the workers' share of that annual production of wealth was 36 percent and that of the manufacturer 64 percent, showing a constantly decreasing amount of annual production of wealth that has gone to the workers and——

Mr. LESINSKI. May I stop you right there?

Mr. DENNISON. Yes, indeed.

Mr. LESINSKI. Is it not a fact that the workers in the automobile industry only receive 6 percent of the total cost?

Mr. DENNISON. I cannot say. Unfortunately, I cannot say as to the direct labor cost, but I can say, in referring to the Henderson report of the investigation of the automobile industry, that there are some very significant figures in appendix B, I believe exhibit 16.

I may say, in explaining this Henderson report, that it has been attacked by the Automotive Chamber of Commerce as being inaccurate. A man by the name of William Knudson, who is connected with General Motors Co., has made a statement that the people who wrote this report perhaps had never been inside of an automobile plant; and as an example of how far wrong Mr. Knudson may be, I will say this: Exhibit 16, appendix B, of the Henderson report, covers the technological progress in the automobile industry. Mr. Chairman, there are various examples here of the technological progress and cost accounting, and I suppose these are available to your committee without my leaving my copy.

Mr. LESINSKI. I have got that.

Mr. DENNISON. I would like, in answer to the data about the cost of the automotive production—you will find this gives you a very good picture of what has been done in the elimination of certain parts, the improvement in tools, and some relative costs in the production of parts. I might say that this data was prepared by our

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society. We had a committee of 17 mechanical engineers working with the research committee under the Henderson group, and this data was not compiled by people who had never been inside of an automobile factory, but it was compiled by the engineers that do the work for the automobile owners.

And I want to say in this connection that a good many of the public seem to be suffering under the misapprehension that Mr. Ford, Mr. Chrysler, and these various manufacturers design automobiles. It is very doubtful if, under the set-up that exists in the automobile plants—it may have been that these men, years ago, were mechanics and technicians, but as time went on and they have devoted more and more of their time to the executive work than they do to the purchase of steel at the lowest possible cost, to the stock market activities in which they engage, and these various things, which have taken their minds away from the details of developing automobiles, and so on—it may be that these men are out of touch with what is going on in their own factories. I would say it would be a reasonable statement to say that these gentlemen who are at the head of these automobile plants could not design and produce an automobile if they choose to, but they would have to rely upon their engineering staff to do it, because during the years since they were mechanics they have gotten away from the technique of doing those things.

So that the report that was written by the engineers—that report was written in cooperation with the Henderson group, and you will find that the data in here is very authentic, and I refer you gentlemen to section or appendix B and the various exhibits dealing with the technological progress. I could not think of any better data to submit to you.

Mr. WOOD. How many copies have you got?

The CHAIRMAN. Have you got one for the committee?

Mr. LESINSKI. No; I have not got but one.

Mr. DENNISON. That can be gotten from the Department of Research and Planning of the N. R. A.; they are available there.

So, Mr. Chairman, I feel that the reason that labor has not gotten the part of this annual production of wealth may perhaps be due to one factor that I wish to call to your attention: We have a certain amount of money invested in the industry which we call capital investment. In 1929 we were producing between $80,000,000,000 and $90,000,000,000 worth of wealth, and as it is, this production of wealth has been cut from $42,000,000,000 to $50,000,000,000 worth of wealth, and they have tried to make out of that much production of wealth the same investment of their capital that they were when we were producing $80,000,000,000 or $90,000,000,000 worth of wealth. If I may make this clear, it is much harder for them to make 60 percent on a given investment of, say, around $250,000,000,000, when they only have $50,000,000,000 worth of wealth to grab from, to pay themselves, and interest on their investments, either in the form of rents or in the form of profits or investments or in the form of interest charges.

Of course, each plan has to earn the interest charges that they have to pay on their bonds. They have, in many cases, to pay, if not rent, the equivalent of rent; that is to say, the profit on the investment in the plant and machinery, which is either rent or the equiva-

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lent; and they have to make, under our present production system, a profit, because that is the incentive for which they run their plants.

To speak again of the automobile industry: The Automobile Chamber of Commerce and the Manufacturers' Association here have kept up a barrage of misleading propaganda for several years to the effect that the automobile industry has paid the highest wages of any American industry, but this is not true. We have found upon investigation that skilled groups in various other industries have, for 15 years or more, been better paid and have had incomparably better conditions than those that have existed in the automotive industry. I have reference here to special industries, as printing, motion-picture operators, building trades, and various closed-shop industries. The only way that I can account for the figures that are submitted by the propaganda departments of the Manufacturers' Association and the Automobile Chamber of Commerce is that they either compare the automobile industry, which is an open-shop industry, to other open-shop and sweatshop industries, or else they take a general average of the whole pay rolls, including skilled and semiskilled groups, and compare these with the prevalent wages of common labor in other industries.

There is no trickery in those statistics, because we found—and later on I am going to submit to you a table of wages showing that we have gone through a period of 7 years when we have been paid—what this skilled group that I represent has been paid over that period of time, and I am going to show you we have received less than the city garbage-wagon drivers.

Indeed, nearly a year ago, when our statistical committee did some research work in comparing our wages with other crafts in Detroit, we found that the workmen who had held their wages up during this depression and who had maintained any standard of living at all were workmen in closed-shop industries. Much to our surprise, we found that the city garbage-wagon drivers, who were organized, received much better pay than the average mechanical engineer. Now, when I say "average mechanical engineer", you must bear in mind that some of our men who, of course, are few in number, receive a comparatively high wage when they are working; and since an average figure contains these higher rates, the lower-paid men in the engineering branch of the automobile industry are low paid indeed.

Of course, that means that I was computing the wages on an annual basis when I made that statement. We wish to point out, in submitting this table that I am going to submit to you, that the statistics should be very reliable, as they were the results of questionnaires that were filled out individually by our own membership. I believe I have more than one copy of this, but I will leave a copy on file for the record, but just while you are listening I want you to bear in mind what these figures possibly mean, and I would like to just read one item from this table to you. Of the group of our membership who are manufacturing tools, dies, and special machines, in the year 1928 the average yearly wage was $2,962. In the year 1929 the average wage of that group, the yearly wage, accounting for lost time and overtime and averaging everything in, was $3,218. In other words, $3,200 a year.

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In 1930 the average wage had dropped to around $2,600 a year, and in 1932 it had dropped to $1,378 a year, and in 1933 it had dropped to $837 a year, and by 1934 it had risen slightly to $1,086.

Now, for those men who have been engaged in designing bodies of these automobiles, the chassis and motors of them, I want you to bear in mind, gentlemen, that these are men of college training, who are familiar with higher mathematics, and who have been intensively trained over a period of years; and that during 1928 their average wage was about $4,600 a year; in 1929, about $3,078 a year; in 1930, about $2,927 a year; in 1931, about $2,480 a year; in 1932, $2,187 a year; in 1933, $1,752 a year; and in 1934, $1,203 a year; and they actually lost, during the year 1934, as above the year 1933.

These figures are very significant in relation to the good that has been accomplished by the National Industrial Recovery Act in that particular industry. I want to say that that seems to prove that our purchasing power has not been raised appreciably or at all by the N. R. A.

In the case of the body, chassis, and motor group, they have more than offset their gain by the time they have been laid off, but they more than offset the gain made by the tool, die, and special machine group, and that only made the condition of the body, chassis, and motor group even more rigid than it was in 1933.

Mr. RAMSPECK. Will you explain to the committee how that reduction came about; was there a reduction in pay per hour or week, or were the hours reduced?

Mr. DENNISON. Although the wages of the individuals were probably not cut in 1934 as above 1933, this item is the average wage, because they lost more time in 1934. Due to the centralization of the drafting rooms in Detroit, and due to the fact that some of these small companies are getting less active each year, it is very significant that the Henderson report—the details of it are very specific, and I will read you some figures as to the centralization of automobiles and how the Big Three companies are putting the smaller companies out of business, and that has a bearing on this particular question.

This is quoted from the Henderson report:

> In 1929, Chrysler, Ford, and General Motors combined produced 3,987,916 vehicles of the total of 5,171,476, or 77 percent of the vehicles produced that year. In 1934 these same three companies produced 2,385,516 vehicles of the total of 2,713,739, or 88 percent. Those three companies alone produced 88 percent.

Here is what is happening to the production of the small companies: In 1929, the Auburn Co. produced 22,732 automobiles, and in 1934 they only produced 7,773 automobiles.

I will read the approximate totals, dropping the hundreds. In 1929, the Graham Paige produced approximately 77,000 automobiles, and in 1934 they produced slightly over 15,000.

The Hudson group, which produces the Terraplane car, in 1929 produced 298,661 automobiles, and in 1934 they produced less than 80,000 automobiles.

The Nash Co., for instance, which in 1929 produced 116,601 automobiles, in 1934 produced 13,260 automobiles.

There are a few others, but that gives you the idea of how the centralization of the industry is proceeding in the automobile industry. The large fish, so to speak, are eating the small fish.

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For instance, the Chrysler Motor Co. has taken various units of—that company formerly maintained a separate drafting room, and they have combined them, so that they have eliminated several hundred men who otherwise would be employed.

Our purchasing power has not been raised at all by the National Industrial Recovery Act in the case of body, chassis, and motor groups, and very little in the case of tool, die, and special-body groups. In fact, we have faced the condition of raises in rent and commodity prices in the last year that more than offset any gain by the tool, die, and special-machine groups, and only make the plight of the body, chassis, and motor groups more wretched.

Since these are averages, and since there are some few of us who are employed all of the year, and since there is such a wide difference between the best paid men and the lower paid, consider what a figure like $1,096.80 means as a yearly average of the average engineer or designer. Some of the more unfortunate individuals actually earned less than $300 in 1 year.

We find that, despite propaganda to the contrary, as we get older we are really kicked out of the automobile industry. Fortunately, I have some statistics on that that were compiled by our statistical committee in February 1934. These are the result of individual questionnaires filled out by our membership.

Of our membership at that time, those that were from 20 to 29 years of age, inclusive, were 285 men; those that were from 30 to 39 years of age, were 564; those that were from 40 to 49 were 266 men; and those from 50 to 59, 24 men; and those 60 or over were only 3. I want to say that those are our membership. Oftentimes the old ones of our membership or group can only hope that we can get their jobs.

Now, in our particular line of business there is no reason for that to be true, no humane reason, except that they just do not want old men, because they feel that the younger ones can work a little harder and a little faster. From physical effort in this line of business, the older man in good health should be able to perform his work very well. He has had years of training, and he has had lots of experience that would be beneficial, but it simply seems that our people are caught in the general labor quality of these corporations and they have made no exceptions in those groups, and it is well known that the other group statistics would show up approximately the same.

Now, just to give you an idea of the prevalent wages when worked, I am going to leave with you a table here about what we are paid for an hour's work. I will not bother to read it, but it is significant. The average wages of men employed in 1934 designing tools, dies, and special machines was around, or slightly over $1 an hour. That average for those employees while working in the group designing bodies and chassis and motors of automobiles would have run around—between $35 and $50, according to what they were doing in the room. I will offer here a very explicit little table for your future study.

(The table above referred to is as follows:)

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TABLE I.—*Membership and wages*

	Tools, dies, and special machines							Body, chassis and motors						
	Numbers of members 820							Numbers of members 328						
	1928	1929	1930	1931	1932	1933	1934	1928	1929	1930	1931	1932	1933	1934
Average number of weeks employed	47.2	49.8	45.5	42.3	30.8	27.4	28.99	50.4	50.0	46.4	45.0	38.5	34.2	37.9
Average hours worked per week (for entire year)	50.0	52.8	44.8	40.3	29.6	18.6	23.4	44.7	44.1	56.3	47.7	41.1	33.7	32.3
Average wages received per week (for entire year)	$57.1	$61.9	$50.6	$42.9	$26.5	$16.1	$20.91	$51.5	$59.4	$56.3	$47.7	$41.1	$33.7	$36.6
Average yearly wages	$2,962.2	$3,218.8	$2,613.2	$2,230.8	$1,378.0	$837.2	$1,086.2	$2,678.0	$3,078.8	$2,927.6	$2,480.4	$2,187.2	$1,752.4	$1,203.9

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TABLE II.—*Typical hourly rates of men engaged in designing tools, dies, and special machines, 1934 (exclusive of foremen)*

TYPICAL ROOM OF 100 MEN

Duties	Number in room	Average hourly rate
Writing process or checking	3	$1.25
First class layout work or occasional checking	15	1.10
Layout—detailing large jobs	50	1.00
Minor layout—detailing	32	.90

TABLE III.—*Typical weekly wage of room of 50 body or chassis designers, 1934 (exclusive of foremen)*

Number in room:	
6, average weekly wage	$55
4, average weekly wage	50
10, average weekly wage	35
30, average weekly wage	25

Mr. DENNISON. I might say that this table represents a substantial reduction in wages over 1928 and 1929.

Mr. RAMSPECK. Let me ask you this question? You all do not work the whole year, do you, but you are paid when you work?

Mr. DENNISON. That is right. That is the significant part of the thing. That is what I meant when I said this table represents what we get when we are working. Of course, when we are not employed we get nothing, and at this time the average designer is not employed over 5 months of the year. That accounts for our low annual pay.

The CHAIRMAN. This association of yours is not a union?

Mr. DENNISON. Well, yes; I might say that describes our organization; that although we are not members of the American Federation of Labor, it happened that our organization was organized then just apparently as an incidental, and it just happened that no A. F. of L. organizer came along at the time, but the men felt the need of an organization badly. It was organized before the N. R. A., in December 1932, and in Detroit we work very closely in with any bona fide labor organization.

The CHAIRMAN. How much membership have you?

Mr. DENNISON. We have around 2,000. I just recently organized a new local. We just organized it in Toledo, Ohio, about 3 weeks ago.

The CHAIRMAN. It includes your regular engineer; is it just designing engineers, or are there any other engineers or anything else?

Mr. DENNISON. No; our men are the highest paid engineers in the industry. We will take, for instance, a typical group; and I think I will have to refer to this table again. We will take a typical group of 100 men engaged in designing tools, dies, and special machines, for instance, and for about 3 hours that room would be right in the process of checking—right in the process, gentlemen, to check the blueprint of the individual part that is to be produced, and to decide upon the machines that are going to be used to produce that part; to decide upon what tools are going to be used to hold that part while it is being cut or machined; to decide upon whether this tool or that tool would be the most economical tool to use. In other words, those men are production engineers.

The CHAIRMAN. How many engineers in the country are outside of your organization?

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Mr. DENNISON. Well, quite a few. I understand the American Federation of Labor, which has an organization similar to ours, called the International Federation of Technical Engineers, Architects, and Draftsmen—their membership lies chiefly in the shipyards, some airplane factories, and mostly where Government workers are found. We seem to be the only organization that has gotten into the particular field in which we are; and, as I say, our organization centers around the Detroit territory, because that is where the parent chapter got started, and as new locals or chapters are organized they seem to have been organized in that territory.

The CHAIRMAN. I gather from your remarks so far that you would be in favor of the Wagner-Connery bill?

Mr. DENNISON. Yes. There may be some little phrases or clauses which I would like to speak upon. I am sorry our time is limited and——

Mr. RAMSPECK. I want to ask you this: You put emphasis on the annual income rather than on the hourly and weekly wages; you have to live 12 months out of the year——

Mr. DENNISON. Unfortunately, that is true.

Mr. RAMSPECK. And you would be better off at the end of the year if you got half as much per hour and worked 40 hours per week?

Mr. DENNISON. That is a very significant proposition, because of the fact that one-half of us loaf more than one-half of the year and work about one-half, and our purchasing power will not sustain a very prolonged period of prosperity. As long as we are getting practically one-third of what we got in 1928 and 1929, we can buy about one-third less; and to those who manufacture clothing and shoes and other commodities the mechanical engineer right now is a very poor prospect.

Now, I will give you an idea of a typical room of these men: About 15 men out of 100 in that line of business would be engaged in first-class lay-out work or checking. Lay-out means to make a large drawing of a special machine, a large assembled drawing, a complete drawing; checking it means looking over the drawing for errors or mistakes. Those are most highly trained men, and there would be about 15 out of 100 on that kind of work in the typical drawing room. About 50 out of the 100 would be engaged in little less important lay-out work and detailing a large job. Now, detailing means this: It means to take from a flexible drawing the separate patterns and draw a little separate picture or drawing of those things, those parts, so that when they get fitted together, when these separate parts are made, they will fit together into the completed machine.

Then about 32 men out of 100 in that particular group would be engaged in minor lay-out work and detaining. That means, of course, the minor lay-out work and means that a less well-trained man would be making some little, small, unimportant machine, something which the principles of mechanical engineering involved in that machine would be very simple. They get about 90 cents an hour, and the highest paid get about $1.25. This table is very, very significant.

Mr. WOOD. You mean to say the lowest rate of pay of those people you mentioned is $1.25?

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Mr. DENNISON. The highest rate of wage of those people is about $1.25 an hour at this time. In 1928 or 1929, even in an open-shop industry, it was $1.35 to $1.65 an hour.

Mr. WOOD. That is to say, their wages in general, in 1928 and 1929, ranged from $1.35 to $1.65?

Mr. DENNISON. Yes; it was around about that, and that would have taken in this group.

Mr. WOOD. In other words, you have gotten a very substantial decrease in the hourly wage since that time?

Mr. DENNISON. Yes; and shorter hours.

Mr. WOOD. And a decrease in the hourly rate?

Mr. DENNISON. That is true; and it is not true of our group alone in the industry and in Detroit and in the automobile industry. Of course, I have not gotten statistics relating to what the other groups are paid, because I am here more or less to represent a specific group; but it must be borne in mind, when I say those things, our men are involved in processing, cost accounting, and in deciding how much can be saved, for instance, on a cylinder-block line by installing a certain type of machinery, and in equipping them with certain types of tools.

Now, I have listed here what I consider some of the facts——

Mr. WOOD. Let me ask you one question.

Mr. DENNISON. Certainly.

Mr. WOOD. In other words, your business is to improve production?

Mr. DENNISON. That is it.

Mr. WOOD. And wherever it is improved, as you improve methods, your wages go down?

Mr. DENNISON. It has seemed so. That reminds me of the book called "Progress and Poverty", in which it is pointed out that the more progress we made, the more poverty we created for a certain group. I account for that by referring you back to what I just read from Labor.

Mr. WOOD. That is a remarkable statement, Mr. Chairman, as to the corporate interests of the industry. I have always harped on the stock argument that a man should be paid what he is worth. I assume that these highly technical engineers, who reduce the cost of production, naturally would be worth more to the company; but instead of that, they get less. Therefore, that stock argument does not hold when it comes to their own business.

Mr. DENNISON. This is the article to which I had reference in Labor. We are in this position, that the improvement of machines and tools seems to be displacing the men in industry, yet that should not be if industries were properly regulated and controlled. It is obvious that, if we improve the tools and machinery to produce wealth, the more wealth we could create, but if the problem of distributing that wealth from machinery is not properly handled, something may go astray.

It seems to me that it comes down to this: That our group has largely solved the problem of production. We have a country here which has enough minerals, enough machinery, and enough raw materials to produce an abundance of wealth, and we have technically-trained men, but also it is important to bear in mind, to operate this industrial machinery, the problem of production has

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been largely solved, but the problem of distribution still remains, the problem of who will get their share of this national production of wealth.

Now, those who are, I might say, employer-minded, who feel that the employers should run things, and have sole control of industry, and should regulate it, make an awful lot of surprisingly queer statements in the papers, and here is a man that says: "The best business system the world has ever known"—a fellow by the name of Robert L. Lund—this is in the Detroit Times of Sunday, March 10, 1935, and he says, "Remove its shackles and the business system will restore itself. The Government-operated recovery has cost enormous sums." And he says, "For the first time in our history, the Government's efforts have been made to bring about recovery," and so on.

The CHAIRMAN. He does not say that if President Roosevelt had not had the E. R. A. and C. W. A., that the Detroit people would be bringing out the National Guard to protect them from people trying to get a loaf of bread. They forget those things.

Mr. DENNISON. In my opinion, in March 1933, Detroit was just on the verge of food riots.

Mr. LESINSKI. Mr. Dennison, was not Detroit on a keg of powder at that time?

Mr. DENNISON. It certainly was. I remember some things that were never published: There were several raids on chain groceries by people, and during the bank holiday, it just happened, at that time, I had an interest in a radio service with a young man as a partner, and it happened that I was out with this particular line at the time for a few months, and this young fellow wanted something to do, and I was doing it as a side line, so to speak, and I got into the homes of these people around Detroit, and when the banks failed, even the small business places up and down the street from this little radio shop got to be very angry because they felt that their life savings were being swept away, and there was something radically wrong somewhere. All they knew was that they had saved for a lifetime and the banks had wiped out their earnings, and among the working class, they had a feeling that some very stringent things must be done, and if Roosevelt had not given them something to hope for at the time, there probably would have been serious trouble.

The CHAIRMAN. Right there, do you feel that, if some measures are not taken to provide for some of this accumulation of wealth going to the people, some of the profits of the workers going to the people—if we do not provide for that, you will have a repetition of that situation again?

Mr. DENNISON. Yes; and I feel not only that, but I feel this: That industry must be stimulated by some means, so that our national production of wealth of only $50,000,000,000 a year must be increased right now, because that is not enough for capital and labor.

I have noticed a number of people continue to work on the theory that we are going to have a continuous army of unemployed; that business is continuing to just operate along, and pick up slowly and make some gains. In other words, it seems to me the idea that the present condition may become a stable condition; and if it does, in my opinion, the present system of producing and distributing wealth is going to wreck itself, because we have certain capital investment in

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industry that demands interest payments, and so on, and the amount of wealth just is not going to be taken out on that particular production. If the yearly annual production of wealth could be stimulated to the point where we were producing from $125,000,000,000 to $150,000,000,000 worth of wealth, and if our railroads were busy carrying this commerce, if our steel mills, which are only operating at less than 50 percent of capacity now—2 months ago they were operating about 60 percent, but they fell off because there have been steel orders canceled in the last few weeks, and I know that to be true——

The CHAIRMAN (interposing). The reason that we are offering this kind of bill——

Mr. DENNISON (interposing). To stimulate business.

The CHAIRMAN. Not only that, but these manufacturers, these employers of the United States took advantage of the E. R. A., took advantage of the suspension of the antitrust laws, full advantage of it, as you show plainly by the Nash and these other people being almost driven out of business, and they refuse to subscribe to the law or section 7–A, which applies to labor, and to give labor any of the benefits of the law—the result is, the rich are getting richer and the poor are getting poorer.

Mr. DENNISON. I was going to touch on that, Mr. Chairman, later on. Do you think I will have half an hour yet?

The CHAIRMAN. We ought to adjourn by 1 o'clock.

(Here followed discussion off the record.)

Mr. RAMSPECK. Let me ask Mr. Dennison one question about the statement that the people in his group, on an average of 5 months in the year—that is, they work on the average of 5 months in the year; did I understand you correctly?

Mr. DENNISON. That would be true of about three-fourths of them. I will explain something to you rather specifically along that line. We will take a typical drawing room of perhaps 200 men. That is a large drawing room, such as an automobile company would have, and during the change, engineering change, when they are going to get out models for the next year, we will say—at the present time, perhaps they may have 10 or 15 people working in that engineering department, but since they are going to get out new models, they rush out to the labor market and hire perhaps 250 or 275 people, and when they get through with this model change, they lay them all off but about 12 or 15, and they are kept in the employ of that company.

Mr. RAMSPECK. Now, what I want to get at is, what did those 250 people that they rush out and employ for a short time do, when they are not working at their regular vocations?

Mr. DENNISON. Well, some of them fall back upon city welfare and charitable agencies, thereby increasing whatever the taxpayer has to pay, and some of them get along by borrowing from their friends or relatives on the prospect of getting a job.

It happens that one of our members that came with me from Detroit, sitting back there, got a job and worked for a week, and he is off again, and his prospects are to hunt around and find a job that he can get, and he may be working for a week and he may be working for 3 months, he does not know. So these people, when they are laid off, have to hunt around, and a large percentage of them have

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to get under the city welfare or charitable organizations. As long as they could, they used up what they had in the savings banks. In 1930 and 1931 lots of them had savings, but now they do not have savings at all.

Mr. RAMSPECK. Do they also get temporary jobs in a less important capacity?

Mr. DENNISON. Sometimes that is true.

Mr. RAMSPECK. Therefore, they compete with some fellow in a lower strata of professional ability?

Mr. DENNISON. Yes; that is true. There are several important points for me to cover yet.

Mr. MARCANTONIO. Mr. Chairman, may I ask if we are going to have to recess until 2 o'clock? I have an appointment that I would like to attend to, and I would like to hear this testimony.

The CHAIRMAN. We would like to hear Mr. Palmisano next.

STATEMENT OF HON. VINCENT L. PALMISANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. PALMISANO. Mr. Chairman and gentlemen of the committee, I am very much interested in the statement of the gentleman who just preceded me. He, in effect, told you that he belongs to the profession that produces production and reduces employment.

Now, I believe that there is really a danger in this country. Of course, I am not here to speak on the question of the bill that you are considering, but I am here in behalf of a joint resolution that I introduced, no. 49, which has for its purpose to prepare Congress, in order that we may dispose of the depression, by putting in a tax upon labor-saving devices. We are all here trying to do something to put men back to work, and my contention is that the big corporations, who are able to employ the brains of the country today to produce production and reduce labor, are the big danger. That is the reason we have here the Wagner-Connery bill, the old-age pension, and the unemployed insurance. I do not believe that the American people want unemployment insurance, except as a last resort. They need work, and in the event that we pass this social legislation, who must pay for it? Where are we going to get the money?

My theory of that is that the machines that cause the unemployment should be made to foot the bill. The resolution that I introduced does not cost one cent. All it says to the Secretary of Labor is to go out and investigate and report back.

The resolution says:

Resolved, That the Secretary of Labor is requested (1) to compile a list of the labor-saving devices, mechanical or otherwise, put in operation in the United States after December 31, 1912, which are still in use; (2) to estimate the number of persons in the United States now unemployed by reason of the use of each kind or type of such devices; (3) to estimate the number of persons who would be employed in the United States in each of the various divisions of industry, commerce, and agriculture but are not so employed by reason of the use of such devise; and (4) to report his findings in detail to the House of Representatives (or to the Clerk of the House if the House is not in session) during the present Congress, together with such observations and recommendations as the Secretary deems pertinent and useful. Every officer or employee of the United States is requested to supply the Secretary with such information relating to any matter under investigation or study pursuant to

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this resolution and contained in the records of the office of such officer or employee as the Secretary may request. For the purposes of this resolution, the term "labor-saving devices" includes any improvement, made after December 31, 1912, of a labor-saving device put into operation on or before such date, and the term "United States" means the United States and all territory subject to the jurisdiction thereof.

I said 1912, because I believe the labor-saving devices were more extensive since 1912, or since the war, than they were prior to that time.

All we ask is for the Secretary of Labor to get all of the data together and let us have it and preserve it, so that, in the event we do not get out of this depression, then let us go in and tax these labor-saving devices, because I believe the wealthy, the big corporations—there are only two ways, in my mind, to do it. I am not so much in sympathy with the share-the-wealth movement, and so forth, but I do believe we ought to limit them. My theory of limiting them is to tax the labor-saving devices by preventing them from using or paying unemployment insurance; and, secondly, by having in the larger brackets, over $200,000, very good income and inheritance taxes.

I believe when you get those three agencies in operation, things will come about so that each and every man in the United States will be able to earn a living. All of these corporations, and we have one in Baltimore and you have them everywhere in the United States—they offer to their men certain premiums to devise some labor-saving devices, and they will get $1,000 or $1,500 for the production of that labor-saving device, and then the man loses his position.

Now, Mr. Chairman, I am not going to take up your time. I am going to put this statement of mine in here, and then quit.

Now, since the depression numerous suggestions have been made and public-work projects proposed in the Seventy-second, Seventy-third, and Seventy-fourth Congresses. The Government has spent considerable sums of money in an effort to eliminate unemployment. To date, while it is true conditions are better than they have been in the past few years, the unemployment situation is still a very serious problem. So serious that the President has recommended unemployment insurance and old-age pensions. A number of Congressmen and Senators have proposed various bills, some of which are ridiculous. However, we must take care of the unemployed and the aged of our country in some form or another and whatever legislation is passed would necessarily require considerable increase in tax rates. The question that arises then is how are we to obtain additional taxes. My contention is that the agency that causes unemployment should foot the bill. That agency is the labor-saving devices and should pay according to the man power it supplants. Once you tax the labor-saving devices you will find the remedy to the unemployment situation, because you will find less labor-saving devices in operation. After all is said and done the American people do not want a dole or pension, they want work, and that is the only method by which they will find work.

I may state that I have received many communications supporting the proposition of taxing labor-saving devices. I might call your attention to a pamphlet issued by a committee of five of which Mr.

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Glenn H. Speece, of Brooklyn, N. Y., is the chairman. This pamphlet was prepared for the President and Members of Congress on January 18, 1934. On page 7 of the pamphlet, Mr. Bernard Kilgore, of Atlanta, says:

As the result of the N. R. A., according to information available here, southern manufacturers are doing two things: They are beginning to place orders for labor-saving machinery and in many instances they are replacing colored labor with white workers.

You will note in this pamphlet that large manufacturers with unlimited machine and power equipment for displacement of labor and with ample bank credit gained whereas small manufacturers and tradesmen through lack of machine and power equipment and bank credit lost. I may state that the pamphlet suggests one of two alternatives—a curb on machine and power production or Government control in order to relieve unemployment.

Permit me to call your attention to a letter addressed to the President by the Progressive Miners of America in Harrisburg, Ill., which letter is as follows:

Hon. FRANKLIN D. ROOSEVELT,
President of the United States of America,
Washington, D. C.

DEAR MR. ROOSEVELT: Please, for the sake of humanity and our Nation, retire enough of the nonconsuming, productive, labor-displacing machinery to allow man, the consumer of the products of the farm and factory, to have employment and a purchasing power. * * *

Respectfully yours,

EDGAR BOLES, *President.*
CALVIN JOHNSON, *Secretary,*
JOHN CARRIGAN, *Secretary.*

I wish to call your attention to an article in the Baltimore Sun of February 8, 1935, which was taken from the report of Leon Henderson, director of Research and Planning Division of the National Recovery Administration, which is as follows:

Glorious achievements of auto industry are included in report.

Imbedded in the Federal report made public today on working conditions in the automobile industry is a section illustrative of what the report calls the industry's "glorious achievements" in production and design.

It is a section in "recent technological developments" in the industry, and from it the following samples are culled:

Elimination of wood has enabled one body manufacturer to wipe out his entire wood mill, which in 1928 employed 3,000 men.

One company this year has begun turning out the underbody of a car with a single stamping operation in place of the 50 man-hours of work previously required.

A $65,000 installation of door-making machines enabled one company to save $325,000 in labor costs.

Introduction of a device for stamping out auto-body tops in a single operation did away with 53 man-hours of work per ton.

Machinery installations cut the labor cost per door in one company from $4 in 1929 to 15 cents at present.

In turning out eight-cylinder motor blocks, one factory now gets more production out of 19 men than it got out of 250 men back in 1929.

Since early 1934, when he then employed 1,100 men, one manufacturer of roller bearings has reduced his force by 150 men and increased production 15 percent.

You will note that with an expenditure of $65,000 one company was able to save $325,000 in labor costs. In another case installation of

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machinery cut the labor costs per door of one company from $4 in 1929 to 15 cents at the present time. Another obtained more production from the labor of 19 men than it obtained from 250 men back in 1929 and another reduced the employment of 1,100 men by 150 and increased production 15 percent. I would be the last man to suggest creating new taxes and this resolution does not, in itself, place any taxes on labor-saving devices except it authorizes the Secretary of Labor to secure the data on various labor-saving devices and submit this information to Congress so that it may be prepared to tax labor-saving devices should the unemployment situation not clear up. The Members of Congress realize that we are unable to continue appropriating from 4 to 5 billion dollars per year for relief and made work to take care of the unemployed. If that is so, is the remedy unemployment insurance and old-age pension? How are we to obtain the next taxes to pay the premium for the unemployment insurance and old-age pensions? My answer is tax the agency that makes it necessary to have old-age pensions and unemployment insurance.

I am certainly glad that I came in when the gentleman preceding me spoke on this subject, because that is one of the points I wanted to bring out——

Mr. RAMSPECK. He did not say anything about whether the savings from labor-saving devices went to labor, did he?

Mr. PALMISANO. No. I think the gentleman preceding me really gave you this better than I have, and while he did not speak of the labor-saving devices—it is not before the committee—I believe that this resolution of mine will not interfere with the bill that you have under consideration, but it just simply says to the Secretary of Labor to investigate and report back, so that in the event we need it, we can go out here and tax the labor-saving devices according to the men they supplant.

The CHAIRMAN. Where did that go, to the Rules Committee?

Mr. PALMISANO. I understand it is here.

Mr. LESINSKI. Mr. Palmisano, I happen to have introduced a similar resolution a year ago on the question of the speed-up systems, and I have letters from the President and Madam Perkins, and everything pertaining to what you have said, and the result of all of that is, under the Henderson report, and I am going to bring that up later in the day.

Mr. PALMISANO. I introduced this resolution in the last Congress, too. I believe we have to do something, and my theory is, tax the machinery that causes unemployment.

The CHAIRMAN. We will take that up later. Thank you very much, Congressman, for your testimony.

The committee will stand in recess until 2 o'clock.

(Thereupon a recess was taken until 2 p. m.)

AFTERNOON SESSION

The committee reassembled at 2 p. m., at the expiration of the recess, Hon. William P. Connery, Jr. (chairman), presiding.

The CHAIRMAN. Mr. Dennison, you may proceed.

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STATEMENT OF WILLIAM E. DENNISON, BUSINESS REPRESENTATIVE, SOCIETY OF DESIGNING ENGINEERS, DETROIT, MICH.—Resumed

Mr. DENNISON. Mr. Chairman, I had left off my testimony this morning at a place where I had started to speak of some of the propaganda by this man named Lund. For your information, this was from the Detroit Times, of Sunday, March 10—it is a part of the previous transcript—in which he is speaking against Government regulation of industry in any way, and makes a number of statements. In one of them he says that this is the best business system the world has ever known, and he seems to feel that unrestricted individual business enterprise is a stimulant to national production. He seems to feel that if industry is regulated in any way, or the Government steps in as a third party between capital and labor, to supervise things, that it will hold back production.

We feel just the opposite about it. Being mechanical engineers and being directly involved in the manufacturing and producing end of things, we feel that on the distributing end, as I started to testify, it is mainly a problem of distribution, and that unrestricted private enterprise has several bad social effects. We feel that such a thing as the duplication of similar products, unregulated hours, unregulated wages, there being no one to umpire disputes between capital and labor, competitive wage cutting, competitive price cutting, and all of those things paint a picture of industrial chaos and a picture of continually falling living standards, and more than that, they cause a number of conditions to be imposed upon the worker which are almost beyond human endurance, such as the speed-up systems used in these shops, and they make possible espionage, spying upon the workers in meeting, they make possible all of this chaotic picture that one can find in the Henderson report of the automobile industry.

The lack of Government regulation, then, I believe, leaves a picture of industrial chaos, and in turning away from the dark picture and looking about us for some possible hope of better industrial relationships, the only place that we have been able to find it is among those industries which are organized, among those industries which have what are generally known as "closed-shop" conditions.

For instance, there are newspapers on which are working men who are working under agreements with the companies, signed agreements, signed contracts, labor contracts existing between the employer and the employee, elective contracts in which the rights of the workers are clearly defined, and also the duties of these workers are clearly defined. They have certain rights relative to seniority, relative to hourly pay and to vacation times, and many things enter into these labor contracts that the open-shop industries do not have. I will try to describe the condition briefly. It is a very important thing to be borne in mind in connection with this bill.

In the open-shop industries section 7 (a) has not done us very much good. The psychological effect of its having been written into law for a time did help us. It has finally, however, sifted down to this, that whereas before the enactment of N. R. A. with its section 7 (a), a foreman could discharge a worker for organizing

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activities, without any excuse whatsoever, now the foreman is hard pressed to find an excuse sometimes. At other times he just simply blames some condition upon the worker. He says, "I discharged him for losing time", "He was not an efficient man", "I discharged him for this, that, or the other cause", instead of giving the real reason.

Section 7 (a) is very difficult to enforce in an open-shop industry as it now stands. One of the difficulties that we have found that Government boards, such as the Wollman Automobile Labor Board, for instance—I will offer that as a typical example, although this is also true of the Detroit Regional Labor Board which has jurisdiction over other industries besides the automobile industry—is that if one of our members has been discharged because he was a member of this organization, or for his organizing activities, the burden of proof is laid on us, and if a code violation has taken place in any way we do not have the right to initiate criminal prosecution. There is a penalty, of course, provided for code violations, but instead of the workers being in a position to force the prosecution of the employer for his violation of the National Industrial Recovery Act, we can only appeal to the Board for a hearing, and they only have the power to ask the manufacturer to come there and meet us, and in many cases they do not even do that.

We had a case of one of our employees against the Hudson Motor Co., which was a very good case in point. This was before the Detroit Regional Labor Board. The employee's name was Paul Horsch. He had worked for the Hudson Motor Co. since January 1929 as a checker. A checker is perhaps one of the best trained of tool designers. He had drawn the top rate that that company had paid for a number of years. He had been retained in preference to most of their employees when there were lay-offs and he had been one of the first ones hired, showing that the company really valued him as a workman.

But in the fall of 1933 they had been ground down as low as 80 cents an hour, and of course they were very much dissatisfied, so that a committee of the men was elected, and a meeting was held in the meeting hall of these designing engineers of that Hudson group, and a committee was selected to present certain requests to the employer, and in the course of time one of the committee members retired, and this man was appointed as a member of that committee, and a letter was sent to the interested supervisor of the company, the foreman, informing him of his replacement on that committee for someone else, and in that letter we also had something to say about working more than 40 hours a week at that time.

It just happened that he was the first one on that committee that the foreman's eye lighted on that morning while he was reading that letter, and the man stopped to speak to a fellow employee for a couple of minutes, a fellow that had just been taken on, that he had not seen for a couple years, and the man then went on to his work. The foreman used that as an excuse to discharge him.

So we took the matter up with this board, and after presenting the case they found from the evidence that there had been no discrimination.

In a closed-shop industry that would be impossible, because on these newspapers it works something like this. A man who is a new

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employee of one of these newspapers works for that newspaper 30 days before he is accepted as a competent worker. At the end of 30 days the newspaper owner is given his choice to declare whether that man is competent or not. After that period, if he has been accepted as a competent workman, he is assigned certain seniority rights and the various rights that come under their labor contract. If, after he has been declared a competent workman, for any reason that newspaper would wish to discharge him, they can only do so with the consent of the shop committee of the employees there. They have to have some good reason for discharging a workman in those particular newspapers.

Another thing I want to point out is that during this depression the wages of these workers in these newspaper plants have not varied. You will remember that table which I read this morning, which shows that in boom times our wages may go up to a certain peak, and in depression times, under the competition of bidding against each other for jobs in the open-labor market, our wages go down, our purchasing power goes down, and our ability to consume goods goes down. The value of everything we touch goes down.

I might digress for just a moment to let you see clearly what I mean by that——

Mr. LESINSKI. Before you proceed, speaking of the regional labor board and your troubles in the Hudson Motor Car Co., isn't it a fact that these regional labor boards consist of manufacturers or one of their high officials?

Mr. DENNISON. Yes.

Mr. LESINSKI. Is not Larned, who happens to be the president of a manufacturing concern, the chairman of the regional labor board?

Mr. DENNISON. Yes; he is.

Mr. LESINSKI. That is the reason for it, then.

Mr. DENNISON. In this particular case Mr. Larned was not involved, but he is in a position so that if anything comes up which is very vital to the interests of the company-minded people, that do not agree on closed-shop conditions and do not agree on labor having a very great return for its work, he is in a position of strong influence there, and the fact that he is a manufacturer is, in our opinion, very much against his being the chairman of that particular board.

In creating these boards some very difficult problems arose.

I notice in this particular bill here there is a question that I want to touch on when I come to it, and I will touch on that question, Mr. Lesinski. I will be glad to touch on that question. I just want to be sure that I touch on them all.

I am speaking of this condition of industrial chaos and the difference between the open and closed shop. I want to demonstrate the social effect of having stabilized wage standards.

Now, the consuming power, the ability to consume goods of these newspaper workers has not been impaired during the depression because they have not taken many wage cuts. There has been some unemployment among them, a little; but, of course, newspapers run pretty steadily, and as far as the closed-shop industry as a whole is concerned, there has been a good deal of unemployment, but wages have not been noticeably cut. Even in the building trades, as hard-pressed as they have been—and no industry has been hit any harder

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than the building trades—wages have been pretty well maintained by those that were organized. The result is that if we had had a nation in 1929—I draw this conclusion—of well-organized labor groups where there had been a balance of power maintained between labor and capital, things would have been stabilized to some extent. This depression would not have been aggravated by wage cutting, by the competition between manufacturers to manufacture something cheaper, cheaper, and cheaper.

And I want to say with reference to this distributing system being very good, that it has also caused a great impetus in the manufacture of shoddy merchandise. I don't know whether that has occurred to many people or not—that unregulated, unrestricted competition has a tendency to encourage the manufacture of substitutes for the real article in order that a manufacturer may sell the article cheaper on the market and undersell his competitor who is making a decent, honest article in trade.

When I say that the value of everything that a certain labor group touches is also benefited along with the wage rate I would demonstrate it this way. If this building were built for sale, and it had been built by labor that in 1929 cost $1.50 an hour, and if in 1933 the hourly rate of that labor had been reduced to 75 cents an hour, and if the labor that dug this raw material from the ground and moved it from the forest, the wooden parts, or processed it from the mines, on the steel and metal parts—if that labor also had been deflated the same amount, and so forth, this building would only be worth half what it cost in 1929 if the amount of deflation had been from $1.50 to 75 cents, because it could be duplicated then for practically half of its former cost. And if you were a building owner, whether it were a residence, an office building, or the owner of any commodity, such as a screw machine, a lathe, or an automobile, and that product a year later should be duplicated for half of the cost, the value of that property would be deflated by half.

So wage cutting in 1929 became a form of deflation, and it became the worst form of deflation, because I have this picture in my mind. I will leave this little sketch. Do you accept sketches here?

The CHAIRMAN. We cannot put a sketch in the record.

Mr. DENNISON. I will describe it verbally this way. If we had a platform erected here, and upon that platform were setting a market basket, a building, an automobile, and a factory, and if there were three legs that held that table up, upon which these commodities were resting, and if we called the level of the top of the table the level of value of these commodities, the three legs of that table upon which the value of the commodities rests would be the cost of the raw materials, the cost of labor, measured by the rate in dollars per hour, and also the profits or rents or interest that went into the retail market value of those commodities. In other words, a commodity is composed, as far as value is concerned, of three things—the raw material, the cost of which is largely labor, the hourly rate of labor, and whatever profit has been made between the producer and the consumer.

Now, currency inflation enters into the picture, of course. Since currency is just a means of allowing two people to exchange two values, it is possible, by changing the value of currency to bring

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about a certain kind of inflation—but I want to point this out in passing, that since your bill would inflate the labor base upon which commodities rest, it would be a better thing than to tamper with currency inflation. I believe that your 30-hour bill would do this. This would support a certain standard level of living, a certain commodity price level. From 1929 until now the hourly rate of wages has been tremendously deflated, with the result that property values have also been deflated. If the labor rate were inflated, the hourly labor rate, it would be the kind of inflation that would bring up these commodity price values to their former levels, and it would also keep purchasing power ahead of the increase of commodity prices.

If we inflate the currency, it has this effect: The cost of commodities goes up in advance of the cost of labor, and during that period in which commodity prices are rising, and in which the working class, in order to meet these rising commodity prices, must receive an increased wage in order to buy even the necessities of life, there is sure to be industrial friction, industrial warfare, strikes, and so forth.

So I am in favor of your bill, for the reason that by inflating labor rates first we have a different picture: We have the hourly rates of labor rising ahead of the rise in commodity costs.

Then I had started to say, when we recessed for lunch, something about factories making for unsteady and spasmodic employment on account of unregulated hours. Since the beginning of the N. R. A. and since the codes have been adopted, some slight amount of improvement has been made, but in 1932, 60 percent of the designers were unemployed, and the ones who were employed worked as many as 75 to 80 hours per week. That was quite common. This was during the extremely low spot of the depression.

We had hoped that the N. R. A. would give to our people the regulated hours that had been given to some industries under some of the codes, but under the automobile code we have found there are various loopholes by which the various manufacturers are now working their designing engineers, in some cases, as much as 70 hours a week while others are unemployed. However, the practice is not quite as common as in 1928 and 1929, but it still is done, because there are loopholes in these codes that exempt the skilled worker in many instances, and the manufacturer has managed to take advantage of every little loophole there is.

One of the devices by which it is done is to pay the men $35 a week in salary, which exempts them from code provisions. It may have been that when the administration allowed such a provision to become a part of the code, they were thinking of that class of worker who is steadily employed the year around, and it may be that the administration is under the impression that $35 a week constitutes a fair living wage. However, it seems that in this industry and among this group of men our average member does not work even as much as 5 months in the year, not much more than that, so you can see that even $35 a week salary means nothing, if a man only works 5 months in the year.

One of the factors contributing to spasmodic employment, et cetera, in this industry, the automobile industry is the determination of the manufacturers to keep a surplus of labor available, by work-

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ing less men more hours, so as to keep competitive bidding for jobs among these men, thus keeping labor costs down.

I wish to point out in this connection that only in open-shop industries does this condition prevail. In closed-shop industries wage scales are set by contract between the employer and the employees, and competitive bidding of one man against another for a job has been eliminated.

One way by which they keep the worker from making use of even the Government boards, one way they keep him afraid to organize is this. A campaign of fear is maintained, so that when conditions are imposed upon a man, generally by means of a bulletin posted upon the company's bulletin board, in which the men are told what they will or must do, no individual feels like starting an argument with the company foreman as to whether he will or will not accept the conditions imposed by the company. To maintain this campaign of fear, industrial spies, private detectives, agents provocateurs, and so forth, are hired by the companies. Employment offices maintain a blacklist system to discourage organization among employees. Old and experienced employees are discharged for showing any signs of organizing activities. In short, a general campaign of terror is maintained, and in Detroit, section 7 (a) of the N. I. R. A. has never been taken seriously and has never been enforced.

The wretched plight of the engineer and the fact that he has no voice in industry makes the speed-up systems possible. Competition for jobs has become so keen that men really do many times more work than they did in 1928 and 1929, but of course it is a much poorer quality of work.

Just to illustrate that, in making drawings last fall for the Packard Motor Co., the Packard Co. insisted on what they call free-hand sketches to be made up. They felt that instead of taking the instruments that the draftsman has to draw with, and really make a decent job of it, they could save money by just having him make a free-hand sketch, and put the dimensions on there, and so forth. Of course, that is not anything that your bill would treat of exactly; it is only a byproduct of this condition of chaos that exists; it is a byproduct of the fact that the worker has no voice as to the conditions under which he works. But it does tend to do this, and in this the Government would be interested: It tends to bring about a condition of poor workmanship in America; it tends to deteriorate the technic of the American engineer who is involved in industry. Therefore an unregulated industrial system which tends to deteriorate the technic of the worker is interesting to some extent in that way.

There are certain loopholes in codes. Mr. Connery, is this pertinent to the question, that there are loopholes in certain codes?

The CHAIRMAN. Yes; very much so, because the fact that section 7 (a) of the N. R. A. was not enforced is the reason for this bill, or one of the reasons for this bill.

Mr. DENNISON. I see.

The CHAIRMAN. And we have just finished hearings on the Connery bill providing for equal labor representation on the code authorities, because we figure that if labor had had equal representation on the code authorities, a lot of our troubles that we are facing today would have been settled long ago.

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I think it was Mr. Green, the president of the American Federation of Labor, if my memory serves me right, who testified here that the cause of the trouble in Detroit in the automobile industry was Mr. Richberg's decision on section 7 (a) at the time of the threatened strike in Detroit. If they had decided at that time that section 7 (a) was section 7 (a) instead of something else, a lot of trouble might have been avoided.

When section 7 (a) was written into the act, and when the bill came up in the Senate, its purposes were clearly stated by Senator Wagner, Senator Walsh of Montana, and I think Senator Norris. An amendment was offered to make company unions O. K., and in speaking against that amendment, which would have permitted company unions, Senator Wagner, Senator Norris, and Senator Walsh told just what section 7 (a) was intended to do—to do away with company unions. When the Senate defeated that amendment by a big vote, and then passed the N. R. A., it was clearly indicated what Congress intended to do by section 7 (a).

Then, when the bill came over to the House, I stood up and made an inquiry of the chairman of the committee that had charge of the bill, "Does this provision, 7 (a), outlaw company unions?" and he said, "Yes."

So the intent of section 7 (a) was made clear to both the Senate and the House.

Mr. DENNISON. That is the way we interpret it.

The CHAIRMAN. But Mr. Richberg in Detroit—they say it was not a decision, but was an agreement. By the way, I understand that Mr. Green, president of the American Federation of Labor, never agreed to that. The whole thing was decided, and then they called him up and let him know what had been decided. Labor did not have a voice in that.

Mr. DENNISON. I feel that this bill here, "To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a national labor relations board, and for other purposes," is a very significant bill, and much needed at this time, and I think that the amount of time this bill will be delayed is very vital right now. I feel that in the last 30 days, if the rest of the country has received the same impression that the workers around Detroit have received, a spirit of discouragement has set in, a reaction has set in, and for this reason. When the N. R. A. was first enacted, I remember I was in Dayton, Ohio, at the time, and I was sitting in the office of the Machinists Union there. I at one time was an officer in it. And I remember reading the testimony before this committee. I believe you were the chairman of the committee in those days——

The CHAIRMAN. I might say this, to give you a short chronological sketch, so you will get the whole picture.

Senator Black introduced the Black 30-hour-week bill. At the same time I introduced the Connery 30-hour-week bill. The Black bill only applied to interstate commerce. The Connery bill applied to interstate and foreign commerce. The Senate passed the Black bill first. By the way, that is still continuing business in the Senate. I mean Senator Black would not need to pass another bill. That bill could be sent to the House, because it is continuing business of the Senate.

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Then the bill came over to this committee here. We struck out all after the enacting clause of the Black bill and put in the Connery bill. In that Connery bill that went in after striking out the enacting clause, we had an entirely new bill, and here is what it was, among other things. It said, no more child labor. We licensed manufacturers; and if they wanted to ship in interstate commerce, they had to promise, as a condition precedent, that they would not employ any child labor. That was no. 1. No. 2, that they would not be a party to a "yellow dog" contract; no. 3, that they would give labor the right to organize in their plants; no. 4, that labor would have the right to bargain collectively through representatives of their own choosing.

We are very proud of that fact in this committee, because that was in the 30-hour-week bill reported almost unanimously by this committee, 5 weeks before N. R. A. was introduced in Congress—not passed, but introduced in Congress. We claim that really the only things that are any good in N. R. A. were put in by this committee, because they wrote those four things into the N. R. A.

We did not have any codes in that bill, but we did not have a minimum wage. Mr. Wood and other members of the committee who had been through the mill with labor, and President Green said, "We are afraid of that minimum wage, because it will become the maximum wage." So we did not write in any minimum wage.

In addition, we did not put in a provision for codes. We said, "There will be a board set up, and here is what will happen. To all manufacturers who will promise all these things we will allow them to ship in interstate commerce. They must promise this, too: Under section no. 1, where their workers are over 50-percent organized they will be licensed, promising, of course, to do these things; no. 2, where their workers are not 50-percent organized, if they will agree to pay the wages that group no. 1 is paying, they will be licensed to ship in interstate commerce."

No. 3 group, open shop: "Will you agree to no. 1, to do what no. 1 group says?" Because it goes back to no. 1. "No." "All right, we will not allow you to ship in interstate commerce. If you do ship in interstate commerce, or attempt to, we will set your hours and set your wages."

There was the foundation, you might say, of the N. R. A. The things this committee stood for are just as good today as they were then; in fact, they are better because the break-down in your codes has shown that this committee dealt wisely with that proposition.

Mr. DENNISON. It seems to me, Mr. Chairman, that that is true. I felt, when the National Industrial Recovery Act was enacted into law, that some balance would be maintained between capital and labor in this way——

The CHAIRMAN. If you will pardon me, just to keep that in the record straight, the reason that bill, which was passed favorably by this committee, did not get action in Congress was because I had written into it a provision—and I will ask your judgment on this provision now—this is what prevented the bill from coming up for action. Incidentally, the American Federation of Labor council instructed President Green to come before this committee and favor that proposition at that time. The provision was that wherever

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the Secretary of the Treasury shall find that the total landed cost of any article or commodity imported into the United States is less than the cost of production of a similar article or commodity in the United States, that articles shall be barred, that commodity shall be barred.

Now, if you have made any study of the match situation, of the glass situation, and hundreds of other situations in the United States today, you will see that that is even more vital today than it was before.

Mr. DENNISON. Yes. I believe that would have been a good provision, and I would like to touch on that. I really am so hard pressed for time that I could—I would stay here with this committee, if I just had the chance to do so.

We felt when N. R. A. was enacted that it would maintain the balance of power between capital and labor, and that was the purpose of the act, but we found that suspension of the antitrust laws as a concession to capitalistic groups worked out in this way, that capital did gain what they wanted, by means of forming trade associations, forming code authorities, and being able to centralize industry, and it seems as though the bigger capitalistic groups have been able in some way to eliminate their smaller competitors since this thing started. I believe there is a tendency that way, as the Henderson report will show.

We had hoped, as an offset to this condition, which some people had claimed, during these committee hearings, would provide a more efficient means of accomplishing the centralization of industry—we had hoped that the wage earner could uphold his conditions also with section 7 (a), and that the various labor rights, enacted into that law would provide us with the means of bringing about a real voice by labor in industry such as I have described.

The CHAIRMAN. You were hopeful like we were. You thought General Johnson was going to say, "You are going to give labor an even break, going to give them what the law says." But he didn't.

Mr. DENNISON. Yes. We thought that when the codes were formed there would be discussion, and we thought that labor groups would be invited to participate in the writing of these codes.

Mr. WOOD. Another thing the law provided was the vehicle whereby the employers have succeeded in organizing their trade associations almost 100 percent.

Mr. DENNISON. Yes.

Mr. WOOD. The law in its provisions is almost a mandate on the part of the employers to form these associations.

Mr. DENNISON. Yes.

Mr. WOOD. It is almost a mandate on the part of any employer to identify himself with his trade association, his union, in other words.

Mr. LESINSKI. Except the Ford Motor Co. Mr. Johnson said he would crack down on them, but he didn't.

Mr. WOOD. Ford is a pretty good manufacturer, of course.

Mr. DENNISON. I have here three significant and pertinent resolutions by the National Manufacturers' Association, which will show you their attitude regarding these matters, when it comes to forming these code authorities. This is from The Nation, of February 13, 1935. I will read it into the record:

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For anyone who is still capable of doubting that big business (1) knows what it wants and (2) prefers profit to principles we present two pieces of evidence, for which we are indebted to the Labor and Socialist Press Service. Exhibit No. 1 consists of two quotations from a resolution prepared for Congress by the National Association of Manufacturers. The first has to do with trade practices.

"The approved competitive practices and prohibitions submitted by the properly defined majority of a group, trade, or industry should be binding upon the minority."

That is what the manufacturers say when it comes to forming code authorities, but when they refer to labor they say this:

Recognize the equal right of minorities or individuals to bargain for themselves directly or through representatives of their own choosing.

The CHAIRMAN. You have brought that out more plainly than any testimony ever given here, as to their inconsistent position.

Mr. DENNISON. That is not the end of it. I continue quoting from The Nation:

Exhibit No. 2 consists of two quotations also—this time from a series of prpositions made by the United States Chamber of Commerce. Proposition VII reads:

"Rules of fair competition formulated by a clearly preponderant part of an industry as suitable for the whole industry with due consideration for small units and approval by the governmental agency should be enforceable against all concerns in the industry."

But when they speak of the labor proposition, no. VIII reads:

In any new legislation it should be made unmistakable that collective bargaining is bargaining with representatives of all groups of employees that desire to act through spokesman, without the right of the minority group to deal collectively, or the direct right of individual bargaining, being precluded.

In orther words, when it comes to forming a code authority these manufacturers claim that they should be able to coerce the smaller manufacturer into being bound by the rules that they make; but when it comes to labor, they feel that the majority in a labor group should not be able to speak for the minority. They feel that the majority in a manufacturing group should be able to speak for the minority, but in a labor group they see it differently.

I have mentioned the way that manufacturers escape payment for overtime by placing the men on a salary basis. In fact, some manufacturers have been brazen enough to take the men off of an hourly basis and put them on a weekly salary basis during a rush period, and then when the rush was over, and when they did not have the men every working day of the week, they transferred them back to an hourly basis again. They had that happen in several of the Detroit drawing rooms. Is that quite clear?

Mr. LESINSKI. That is clear. I know of cases men worked 7 days a week, 12 hours a day, and they did not draw any more money than they did for an hourly rate, working 44 hours a week. In other words, they were put on a salary basis for the 7 days.

Mr. WOOD. They adopt a salary basis in peak times, and in slack times they drop back to an hourly basis?

Mr. DENNISON. We have also found that under the codes the smaller manufacturer is being very much discriminated against. The middleman is being fast eliminated from the American industrial scheme. The small manufacturer is becoming more and more

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dependent upon the large manufacturer each year, and the Henderson report deals with that very effectively.

Mr. LESINSKI. In that instance, talking about the small manufacturer, he was the first man that wanted to abide by the code?

Mr. DENNISON. Yes, sir, he was.

Mr. LESINSKI. It was the large manufacturer who forced him off the code?

Mr. DENNISON. We had a case in point last fall. We had a small tool manufacturer there who was getting work from Chrysler and Packard in designing tools to produce automobiles for these companies. Our organization was trying to maintain a 40-hour week, at least. We had a lot of our members unemployed, and we went to a number of small shop owners, and we said to them it would be better for them and better for us if more men were put to work, and if we did not have so much employment, and that we would like to see our idle members put to work, so that we did not want to work more than 40 hours a week. So we closed down one Saturday morning, through our ability to do it, several of these smaller shops that received work from the large corporations to do. I was chairman of a committee in the mechanical engineering service in Detroit, working there at that time, and on the Saturday morning that we closed down that shop, to prevent working longer——

Mr. WOOD. That is, you adopted the 40-hour week?

Mr. DENNISON. Yes; we did. We had power over the small manufacturer of tools who was doing work for Chrysler and Hudson, to force him to close down. He had to do it, because if he did not his men might have quit him.

At 11 o'clock that morning my phone rang—I went back to my hotel and was sitting in my room—and it was this shop owner on the phone; and he said, "Mr. Dennison, you will have to come down to the shop. Mr. Lee, of the Chrysler Corporation, is here in my office now, and he threatens to take all of my contracts and all of my work away from me if I do not work these extra hours."

So I had to do this. So far, our relationship was this small manufacturer had been fairly decent. He had given our organization some preference in hiring men. We did not have closed-shop conditions there, but tolerable working conditions compared to other places, and we had to save these men. We could now allow them to go under. They might have gone to a shop even worse than the one they were working in. So I had to call in 5 or 6 men to get out the particular jobs this company wanted in order to save him from losing his contract with these large corporations.

So it is true that the difference in these codes between the little tool-die manufacturers' code and the automobile code has made it possible for the big manufacturers to coerce the small manufacturers by not living up to the spirit of the law.

The CHAIRMAN. You said that under the N. R. A. it is practically mandatory for the trade associations to get together to organize trade organizations.

Mr. DENNISON. Yes.

The CHAIRMAN. But nothing about labor. Now, I will read you just what this committee reported out, just this short part, as a Board to be set up:

The Board shall issue a license authorizing the licensee—

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that would be the trade associations—

to transmit through the mails and transport in interstate or foreign commerce, goods, articles, or commodities produced, processed, or manufactured by said licensee: (a) To any member of the national trade associations of any industry, if such association (1) represents persons who manufacture, produce, or process 50 per centum or more of the total goods, articles, or commodities in said industry; and (2) has entered into an agreement not inconsistent with the provisions of this Act with respect to wages, working conditions, and limitation of production with a national labor union representing the workers in such industry.

That was a mandate on labor to organize, wasn't it?

Mr. DENNISON. Mr. Chairman, it certainly was. I believe that the effect of such legislation would have been to permit such stabilization of industry as I have tried to picture between these workers and these newspapers in Detroit.

The CHAIRMAN. Here is this provision. A license would be given by this Board—

(b) to any person not a member of the national trade association representing the industry in which such person is engaged, and coming within the provisions of paragraph (a) of this section, who agrees to comply with all the provisions of the agreement with respect to wages, working conditions, and limitation of production entered into by such association;

(c) To any person not coming within the provisions of paragraphs (a) or (b) of this section, engaged in the production, processing, or manufacturing of goods, articles, etc., who agrees to comply with such rules and regulations as the board shall prescribe with respect to wages, working conditions, and limitation of production in the industry in which said person is engaged.

There you were.

Mr. DENNISON. Some such legislation eventually will have to be enacted, or we are going to be faced with continually growing industrial chaos, strife, strikes, etc., because of the effort of the wage earners to maintain some kind of a living, as opposed to the competitive practices of the employers, such as wage cutting and keeping labor costs down.

The CHAIRMAN. I have always maintained that that Richberg decision in the automobile situation was responsible for every strike which has occurred from that time to this.

Mr. WOOD. There isn't any question about that in my mind—a great majority of the strikes, at least.

Mr. DENNISON. Well, there inconsistency in these codes which discriminate against the smaller manufacturer and only makes the centralization of industry go on at a much more rapid rate than before the enactment of the N. R. A.

And, as I have pointed out, these codes do not protect the skilled worker.

With regard to these elections, I do not want to forget to testify before I leave, something contrary to what this previous witness testified, about the American Federation of Labor holding only four and a fraction percent of these labor-board elections.

The CHAIRMAN. I wanted to get a parallel of the situation of your codes. If the Democrats on this committee sitting around this table here should write a bill and decide on a bill and would not allow Mr. Welch, of California, and Mr. Hartley, and Mr. Hope, and Mr. Lambertson, and Mr. Marcantonio to talk or vote on that bill, you would not say that that was legislation by the people of the United States, would you?

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Mr. DENNISON. No, indeed.

The CHAIRMAN. That is exactly what happened in the case of your codes. The manufacturers write the codes, and labor does not even have a vote, even as a minority, on the codes.

Mr. DENNISON. That is very true.

Mr. WOOD. They not only write the codes but administer them after they are written.

Mr. DENNISON. I would say, Mr. Chairman, that one of the main causes for the American Revolution, from which this country started, was the fact that we had to live under a government without any voice in it and we had taxation without representation. That was one of the cries of the early Americans and one of the reasons why they broke away from England, because they had to live under conditions without having any voice in the government.

And in the industrial field it is just about this way with us workers in Detroit now. We have certain conditions imposed upon us and we have no voice in forming the rules under which we work.

With regard to the Government Boards that have been appointed so far, the gentleman who spoke this morning tried to show that the American Federation of Labor and the rail unions were not recognized on the Boards. He might as well have included us. He might as well have included the A. E. M. W. A., because none of us were recognized on the Boards in the elections. I want to show you why. I have an exhibit here that will interest you. I want to make it perfectly clear, if I can, why the real bona fide labor bodies representing the workers in Detroit cannot take part in the elections under the National Automobile Labor Board.

Here is a notice which was posted by the Automobile Labor Board in the Packard Motor Car Co. I will turn this over to the stenographer, if it can be entered as an exhibit.

The CHAIRMAN. Yes; we ought to have that.

(The notice referred to is as follows:)

NOTICE TO ALL EMPLOYEES OF PACKARD MOTOR CAR CO.

On February 12, 1935, the Automobile Labor Board will conduct a nominating election under the terms of the automobile settlement of the President of the United States, dated March 25, 1934.

On the ballot used at this election you may write in the name of any person you desire to have represent you in dealing with the management and the labor group affiliation, if any, of your candidate. Representatives will not be restricted to employees.

Employees such as foremen, subforemen, or group or gang leaders who act in a supervisory capacity will not be eligible to vote.

The plant has been divided into 20 districts. The names of the two persons in each district who receive the largest number of votes at the nominating election on February 12, 1935, will appear on the ballot used in the final election on February 21, 1935.

In the final election the candidates receiving the largest number of votes will be the representative of your district. If the representatives receiving the largest number of votes for all districts do not provide proportional representation on the bargaining agency for all substantial labor groups, additional representatives will be added from among candidates receiving the next highest votes in the plant in any groups entitled to more representatives.

The departments and election booth locations in each district are as follows:

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	Department Symbol
District 1—Booth location, building 9, fourth floor, department SA:	
Salvage	RV
Receiving	SA
Stock	SB
Truck repair	SK
Executive garage	ZB
Trucking	SD
Stores	RSC
Administration	ZA
Harper garage	ZE
Restaurant	ZL
Hospital	RY
Production control	RST
Metallurgical	RGJ
Lumber stores	RSY
Car shipping	RXC
Car loading	RXA
Boxing and packing	RXD
Truck drivers	RXB
Inspection	LGB
Stores	RSW
District 2—Booth location, building 12, fourth floor, department AH:	
Experimental—stores	AA
Proving grounds	AF
Experimental:	
Garage	AG
Assembly	AH
Machining	AM
Wood and sheet metal	AN
Trim	AP
Inspection	SGB
Engineering	AC
Body engineering	AL
Blueprinting	AR
Clerical	RG
District 3—Booth location, building 19, fourth floor, department LD:	
Body metal finish	LD
Plating	DE
District 4—Booth location, building 17, fifth floor, department HM:	
Bonnet and gas-tank assembly	HM
Fender assembly	HF
Metal finish and paint	MM
Wheel paint	XMK
District 5—Booth location, building 12, first floor, department FG:	
Final assembly	FH
Chassis assembly	FG
Heavy repair	FD
Final car inspection	KB
Cylinder block machining	DM
Minor repair	DF
Rust proof	DN
Clerical	S
District 6—Booth location, building 12, second floor, department LF:	
Body trim	LF
Sewing and pasting	LB
Body painting	LME
District 7—Booth location, building 12, third floor, department DC:	
Motor assembly	F
Steering assembly	DH
Motor parts	UDH
Water and oil parts	DC
Pistons and connecting rods	UDA
Crankcase	DO
Electrical	FE

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	Department symbol
District 8—Booth location, building 2, second floor, department DB:	
Crankshaft	DD
Axle assembly	DJ
Gear blanking	DR
Gear cutting	DS
Axle parts	DB
Transmission gear	DX
Automobile screw machine	DL
Heat treat	JJ
District 9—Booth location, building 23, fourth floor, department LM:	
Body framing	LC
Wood mill	LM
Jig forms	RPE
District 10—Booth location, building 2, fifth floor, department RPF:	
Tool designing	RPA
Operation sheets	RPB
Clerical	RPD
Tool stock	RPS
Tool room	RPF
Machine repair	RPC
District 11—Booth location, building 61, first floor, department EP:	
Forge	ED
Heat treat	EJJ
Forge die	EP
Aluminum casting	BA
Pattern making	BB
Core making	BC
Cleaning casting	BE
Iron castings	BF
Jobbing molding	BG
Forge stores	ES
Forge inspection	EGB
Foundry inspection	BGB
Clerical	B
District 12—Booth location, building 45, first floor, department LHA:	
Die room	RPL
Die models	RPJ
Stamping	LHA
Sheet metal parts	LHB
Sheet metal machining	LR
Stock	LSB
Machine repair	LPC
Die designing	RPH
Clerical	L
District 13—Booth location, building 70, second floor, department RRC:	
Millwright	RRA
Steamfitting	RRB
Carpenters	RRC
Electrical	RRE
Janitors	RRF
Guards	RRH
Structural iron	RRK
Construction stores	RRS
District 14—Booth location, building 27, Court, first floor, department VTS:	
Small parts machine	ODB
Large parts machine	ODC
Service tools	ODF
Gear machine and assembly	ODS
Assembly	OFA
Sheet metal	OH
Paint	OM
Trim	ON
Stores	VTB
Return goods	VTC

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	Department symbol
District 14—Continued	
Accessory stores	VTD
Packing and crating	VTS
Power house	RT
Shipping	RXO
Inspection	OGB
Clerical	O
District 15—Booth location, building 37, third floor, department XLC:	
Body framing	XLC
Body metal finish	XLD
Fender paint	XMM
Body panel	XLH
District 16—Booth location, building 35, third floor, department XME:	
Door assembly	XLE
Body paint	XME
District 17—Booth location, building 35, second floor, department XLF:	
Body trim	XLF
Garnish molding	XLP
Cushions	XLA
Sewing and pasting	XLB
Machine repair	XPC
Clerical	XPF
District 18—Booth location, building 35, first floor, department XFG:	
Chassis assembly	XFG
Motor assembly	XF
Heavy repair	XFD
Convertible trim	XLK
Stock	XSB
Do	XSA
Clerical	X
District 19—Booth location, building 38, first floor, department XGB:	
Transmission	XDX
Axle machining	XDB
Heat treat	XJJ
Inspection	XGB
District 20—Booth location, building 33, first floor, department XDD:	
Cylinder blocks	XDM
Crankshaft	XDD
Connecting rods	XDH
Motor parts	XDC

NOTE.—The election booths will be open from 7 a. m. to 7 p. m. except in districts 10 and 12, which will be open from 5:30 a. m. to 7 p. m.

Instructions to employees who are not working on February 12, 1935.—Employees eligible to vote and desiring to do so may come to the employment office, where an official of the Automobile Labor Board will direct them to their proper election booth.

See bulletin boards for the complete outline of election procedure.

AUTOMOBILE LABOR BOARD,
LEO WOLMAN, *Chairman*,
RICHARD L. BYRD,
NICHOLAS KELLEY.

Mr. DENNISON. I have drawn a circle around the departments in which our men work. In this plant we have been working three different groups around the plant. In what the Automobile Labor Board is pleased to call "district no. 2" we have the body and the chassis—that is the motors and the part of the automobile that is not the body, the framework, et cetera, up to the body, which we call the chassis. The chassis, body, and engineering departments have been grouped together in district no. 2, but with those people in district no. 2 are experimental-stores, proving grounds, experimental garage, experimental assembly, experimental machining, experimental wood and sheet metal, experimental trim, inspection,

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blueprinting, and clerical; in other words, people in other lines of work besides mechanical engineering. In that particular district, if we were to enter a candidate of our organization to represent us with the management, we would be competing with a great group of miscellaneous departments in which we may have 50 men in that district of 250 people, and we would be outvoted 5 to 1 before we got started.

Then they take another group of engineers in district no. 10, the tool-designing department, and they group them in with operation sheets, clerical, tool stock, tool rom, and machine repair, a number of miscellaneous groups, and it simply means this:

We also have another 1 here, die designing, which is grouped with 8 more miscellaneous departments. It means that they have taken and divided these engineering groups up in such a way that our organization cannot truly have any chance of electing our candidate in one of these elections.

So that, although we have an organization of 1,200 members, and although we would have those departments 100 percent organized in that partiuclar election district, the other types of workers would outnumber the engineers 10 to 1.

Mr. WOOD. In other words, you have no opportunity to elect anyone from your craft to represent you?

Mr. DENNISON. That is it, no opportunity to elect anyone to represent us at all. We may be represented by some floor sweeper.

Mr. WOOD. Some man in some trade that knew nothing about engineering may represent you?

Mr. DENNISON. We may be represented by a man who only knew how to go to a stock room and pick a piece of stock out of a crib and hand it to whoever calls for it. We may be represented by a fellow who is only some kind of a clerk, who knows nothing of engineering problems, who knows nothing of our problems, who has not attended our meetings, and could not possibly represent us.

Mr. WOOD. You would just simply be deprived of representation, that is all.

Mr. DENNISON. That is true. We would be deprived of representation under the plan under which this election was conducted. So the bona fide unions have refused to take part in these elections.

Here is the result of some elections held, one of the early elections held here, on which I have written a little article for our magazine, which will just cover that. I will just read you what we feel about these elections. Here is a magazine here called "Designing Engineer", which is published by our organization. I will leave this copy here as an exhibit, and I will mark an article here dealing with these labor board elections. Incidentally, the article refers to a misquoting of myself by the public press there. We find that the public press often misquotes us, being owned by people who do not have our viewpoint about things. But in referring to the Automobile Board election results in the various automobile plants of Detroit, a table was issued by the Automobile Labor Board as follows:

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Unaffiliated	34,273

These are supposed to be the ways these workers voted:

American Federation of Labor	1,847
Employees associations	508

These employee associations, of course, are company unions.

Associated Automobile Workers of America	266
Mechanics Educational Society of America	164
Auto Service Mechanics Association	16
Auto Workers Union	14
Society of Designing Engineers	7
Industrial Workers of the World	4
Blank ballots	465
Void ballots	722
Total ballots cast	38,336

The next morning the Detroit Free Press featured this matter on their front page as a repudiation of outside labor organizations, by labor in the automobile industry. The item in the table of 34,273 "unaffiliated" workers was played up as the proof of the workers' sterling independence of any organization from any outside body. Nothing was said of the item of only 508 company union votes.

So, let's revise the table in this manner, bearing in mind that the American Federation of Labor, the Mechanics' Educational Society, and the Society of Designing Engineers have instructed their membership not to vote, and the Employees' Associations (company unions) really tried to enter the elections and poll votes. The table would look something like this.

I have changed the table around to meet our viewpoint.

Revised table

Members instructed by the American Federation of Labor, the Mechanics' Educational Society of America, and the Society of Designing Engineers not to vote, and workers too puzzled by it all	34,273
Members so enthusiastic that they voted, even against instructions, or those who could not be reached and instructed in time	2,018
Employees' associations (company unions)	508
Others that this writer cannot properly classify, those who voted for Jiggs, Andy Gump, etc	1,537
Total	38,336

Mr. LESINSKI. Mr. Dennison, there is your statement [handing newspaper to witness].

Mr. DENNISON. Yes; this is the statement. The date of that issue was about February 1. The paper here introduced as evidence came out on February 2, so I presume the Board released that on February 1. It is a copy of the Detroit Free Press. Shall I offer it?

Mr. LESINSKI. You are offering this. It is not necessary to put that in.

Mr. DENNISON. I will offer this whole article outlined in red, as an exhibit.

(The article referred to, from Designing Engineer, of February 1935, is as follows:)

NOTES AND REPORTS

By Wm. E. Dennison

THE BRASS CHECK

I suppose most of our members know what to expect of the public press, especially on matters where there is a conflict between capital on one side, and employees on the other.

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Well, the Automobile Labor Board released the results of elections in the various automobile plants of Detroit to the newspapers on January 25. We also received a copy at our office.

The table was as follows:

Unaffiliated	34,273
American Federation of Labor	1,847
Employees Associations	508
Associated Automobile Workers of America	266
Mechanics Educational Society of America	164
Auto Service Mechanics Association	16
Auto Workers Union	14
Society of Designing Engineers	7
Industrial Workers of the World	4
Blank ballots	465
Void ballots	772
Total ballots cast	38,336

The next morning the Detroit Free Press featured this matter on their front page as a repudiation of outside labor organizations, by labor in the automobile industry. The item in the table of 34,273 "unaffiliated" workers was played up as the proof of the workers' sterling independence of any organization from any outside body. Nothing was said of the item of only 508 company union votes.

So, let's revise the table in this manner, bearing in mind that the American Federation of Labor, the Mechanics' Educational Society, and the Society of Designing Engineers have instructed their membership not to vote, and the employees' associations (company unions) really tried to enter the elections and poll votes. The table would look something like this:

Revised table

Members instructed by the American Federation of Labor, the Mechanics Educational Society of America, and the Society of Designing Engineers not to vote, and workers too puzzled by it all	34,273
Members so enthusiastic that they voted, even against instructions, or those who could not be reached and instructed in time	2,018
Employees' associations (company unions)	508
Others that this writer cannot property classify, those who voted for Jiggs, Andy Gump, etc	1,537
Total	38,336

Which is about the way it could have been handled by a press in any way favorable to the interest of the worker.

On Saturday about 9 to 10 a. m. I called up the Free Press, the News, and the Times and issued the following statement:

"I have noticed that the Automobile Labor Board has issued a table showing the results of the election in the various automobile plants, and since the Society of Designing Engineers are credited with 7 votes, we wish to inform the press that our members are instructed not to vote. The reason we have 7 votes is because I could not get word to some of those in the engineering department of the Cadillac Motor Co. in time to prevent it.

"The reason our members are instructed not to vote is because at these elections the plants are, as a rule, divided into election districts, and there are about 250 to 300 persons in each election district. Mechanical engineers are often in one of these election districts with tool crib or stockroom men, production workers, or any handy group that occurs to the board to include with them. Since the engineering department may be 25 or 30 men the ratio of 10 to 1 is agaisnt our chances of being represented by a candidate of our own choosing."

On Sunday the Detroit News published this:

"The Society of Designing Engineers has instructed its members not to participate in the plant elections, William E. Dennison, business representative, said Saturday. He said the members decided to refrain from voting because they are outnumbered and 'would have no chance of electing one of our members to office.' He said the organization numbers approximately 1,200."

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What a garbled version this is! The News rewrite would leave the impression that some other group outnumbered us in the engineering departments of the various plants. On this particular occasion the Times gave me a fair quotations as far as it went, but did not see fit to give us enough space to fully present our case. Here is the Times' quotation:

"William E. Dennison, of the Society of Designing Engineers, also protested announcement of the results as misleading. He said: 'The reason our organization did not poll more votes was that our members were instructed not to participate in the elections. The few ballots cast in the Cadillac plant were from members who voted before they received instructions.'"

Is this habit of the daily newspapers in Detroit of misquoting news from labor sources intentional? My answer is, read the Brass Check, by Upton Sinclair.

In the meanwhile I want to ask our members to please not believe what you read when you see some silly thing in the daily papers coming from a labor source.

Mr. DENNISON. I hope I have given the committee a clear picture of why we do not enter these elections under that board. The rules of the board are so fixed that we cannot enter into them fairly. It shows that item, 508 votes by the employees for the dummy unions that the companies tried to get the workers to vote for, to show that the workers would favor company unionism in Detroit.

Mr. WOOD. What percentage of the company membership does that 500 represent?

Mr. DENNISON. The total is 38,000 votes, and only 508 of them were company-union votes.

Mr. WOOD. There were 500 company-union votes. I assume there are more company-union members who did not vote, in the face of the fact that the employers were attempting to intimidate them to vote?

Mr. LESINSKI. I think I can make that explanation. Most of the employees in the automobile plants are floaters. They will probably start in January and work during January, February, March, and April, and then they are through again. In other words, the turnover in every factory is tremendous and surprising, in opposition to all the statements the newspapers make that they have this thing organized. A large percentage of the people who voted belong nowhere. They are just ordinary people who float from one factory to another, wherever they can pick up a job. Naturally, when they are confronted with a ballot they don't know who to vote for, and the statements made in all of these press clippings that I have here will show there is not an employee in any of the factories that would know whom to vote for, because they are not organized, they are not allowed to organize for fear of being discharged.

Mr. DENNISON. That is true, and it is very difficult to arrive at what percentage of the people that the company claims are company-union members actually record themselves as company-union members, because these company unions are promoted by the companies and practically forced upon the men. I was working at the Hudson Motor Co. when they tried to promote a company union. In the tool-designing department we people refused to work or take any part in the election of any of these company-union men. The result was that the master mechanic sent for us to come into his office, and tried to put pressure on us to go out and vote for some company-union candidate—and that is since the N. R. A. has been enacted—but they did not pay any attention to him, with a union being promoted by

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coercion, and all that sort of thing. They tried to promote a company union there and they tried to coerce us into joining it. The result is that a lot of fellows around the plant will pretend to yield to the company's coercion, and they will go and either put in a blank ballot or vote for Andy Gump, or Jiggs, or some comic strip character, so that they can say they have been to the ballot box, rather than argue with the foreman and say "No; I won't vote." The union workers in Detroit resent the company union. They know it is a dummy; they know it is put up by the employer.

Mr. WOOD. The majority of the members, in other words, join under duress?

Mr. DENNISON. They do.

Mr. LESINSKI. While we are on this company-union matter, I happen to have evidence here, sent to me by Mr. Greer, the head of local no. 1, showing that one man has received this bunch of envelops, to join the company union. I happen to have the pamphlets present that they have used in their efforts to have these men join the company unions. I believe this is something that is interesting.

Mr. DENNISON. It is, indeed.

Mr. LESINSKI. That is coercion, against the law.

Mr. DENNISON. And, Mr. Lesinski, I have found that they have hired corporation lawyers to write these ballots and write up the constitution for these workers, and try to force it on them. The workers had no voice in the writing of that constitution. This was written by a corporation lawyer.

Mr. LESINSKI. This was sent to me by Mr. Greer, the head of local no. 2. I am going to present that letter in the record, as Mr. Greer's testimony.

Mr. DENNISON. That is very good.

I have just discovered, among my data, some very significant tables. I am going to leave these with the stenographer as an exhibit, but just in passing I will say that these tables demonstrate that, whereas the code set a minimum labor rate, what the company actually did was to take some money from the highest-paid worker and give the lowest-paid worker some small raise to bring him up to somewhere near the code provisions, but in the long run, it is very doubtful if any raises they have given the workers have really given us anything, as far as total pay rolls are concerned. These figures in these tables show how a number out of a certain number of employees has been shifted to the lower-paid groups. These are the lower-paid groups here, and this is the number of men that got this rate in a certain year.

For instance, in the year 1929, of the men that answered this questionnaire, 23 got from $1.30 to $1.39. In 1932, only 7 of them were getting that much; in 1933, only 2; in 1934, only 7. That group had been shifted up, but the most numerous group in 1934 was getting from 90 to 99 cents.

Mr. WELCH. Per hour?

Mr. DENNISON. Per hour; yes, sir. I will just offer these tables for the committee's study. These tables are incorporated in the Henderson report. This is from our files, from the questionnaires submitted to our members.

(The tables referred to are as follows:)

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TABLE IA.—*Unemployment by number of weeks per year and distribution of employees by number of weeks unemployed*

Weeks unemployed	Number of employees			
	1929	1932	1933	1934
0-3	171	48	13	61
4-7	33	16	13	12
8-11	12	19	11	6
12-15	6	20	9	7
16-19	4	13	11	12
20-23	4	19	26	9
24-27	2	28	31	9
28-31	----------	11	43	7
32-35	----------	11	27	6
36-39	----------	13	20	4
40-43	----------	15	8	5
44-47	----------	3	8	3
48-51	----------	2	3	2
52 (totally unemployed)	----------	14	9	----------
Total	232	232	232	143

NOTE.—The 1929, 1932, and 1933 reports are based on a single group of 232 employees carried through the 3 years. The 1934 distribution is based on a questionnaire covering only the first quarter. The weeks of unemployment have been adjusted to an annual basis here, but on account of possible seasonal factors are not quite comparable with the other distributions.

TABLE IIA.—*Average hourly earnings and distributions of employees by average hourly earnings*

Dollars per hour	Number of employees			
	1929 [1]	1932 [1]	1933 [1]	1934 [2]
0.40-0.59	0	3	2	1
0.60-0.69	2	4	12	4
0.70-0.79	3	20	21	6
0.80-0.89	9	38	37	10
0.90-0.99	14	28	33	39
1.00-1.09	23	29	22	35
1.10-1.19	34	14	18	13
1.20-1.29	41	8	7	23
1.30-1.39	23	7	2	7
1.40-1.49	10	5	3	5
1.50-1.59	6	3	1	----------
1.60 1.69	7	1	----------	----------
1.70 and over	14	4	1	----------
Total	186	164	159	143

[1] The 1929, 1932, and 1933 reports are based on a single group of 186 employees carried through the 3 years. In 1932, 12 of the group were totally unemployed and 10 were employed in occupations other than design engineering or else submitted faulty reports. In 1933, 6 were unemployed and 21 were occupied in other occupations or submitted faulty reports. Faulty reports account for most of this latter class.

[2] The 1934 report is based on a questionnaire covering the first quarter only.

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TABLE IB.—*Unemployment by number of weeks per year and accumulative distributions of employees by number of weeks of unemployment*

Weeks per year	1929		1932		1933		1934	
	Number [1]	Percent	Number [1]	Percent	Number [1]	Percent	Number [1]	Percent
4	171	74	48	22	13	6	61	43
8	204	88	64	29	26	12	73	51
12	216	93	83	38	37	17	79	55
16	222	96	103	47	46	21	86	60
20	226	97	116	53	57	26	98	68
24	230	99	135	62	83	37	107	75
28	232	100	163	75	114	51	116	81
32	-------	-------	174	80	157	70	123	86
36	-------	-------	185	85	184	83	129	90
40	-------	-------	198	91	204	91	133	93
44	-------	-------	213	98	212	95	138	96
48	-------	-------	216	99	220	99	141	99
52	-------	-------	218	100	223	100	143	100

[1] Number unemployed during less than the designated number of weeks.

Weeks of unemployment.—Of the employees, 25 percent unemployed less than 1, 1929; 6, 1932; 19, 1933; 4, 1934. 50 percent unemployed less than 3, 1929; 18, 1932; 28, 1933; 8, 1934. 75 percent unemployed less than 4, 1929; 28, 1932; 34, 1933; 24, 1934.

TABLE IIB.—*Average hourly earnings and accumulative distributions of employees by average hourly earnings*

Average hourly earnings	1929		1932		1933		1934	
	Number [1]	Percent	Number [1]	Percent	Number [1]	Percent	Number [1]	Percent
$0.60	0	0	3	2	2	1	1	1
$0.70	2	1	7	4	14	9	5	3
$0.80	5	3	27	16	35	22	11	8
$0.90	14	8	65	40	72	45	21	15
$1.00	28	15	93	57	105	66	60	42
$1.10	51	27	122	74	127	80	95	66
$1.20	85	46	136	83	145	91	108	76
$1.30	126	68	144	88	152	96	131	92
$1.40	149	80	151	92	154	97	138	97
$1.50	159	85	156	95	157	99	143	100
$1.60	165	89	159	97	158	99	-------	-------
$1.70	172	92	160	98	158	99	-------	-------
$2.90	186	100	164	100	159	100	-------	-------

[1] Number of employees receiving less than the designated amount per hour.

Dollars per hour.—Of the employees 25 percent averaged less than $1.08, 1929; $0.84, 1932; $0.81, 1933; $0.94, 1934. 50 percent averaged less than $1.22, 1929; $0.96, 1932; $0.92, 1933; $1.03, 1934. 75 percent averaged less than $1.36, 1929; $1.11, 1932; $1.06, 1933; $1.19, 1934.

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TABLE IIIA.—*Average hours per week and distribution of employees by average hours per week*

Average [1] hours per week	Number of employees			
	1929	1932	1933	1934
1–19	0	0	2	4
20–29	0	5	23	6
30–34	0	3	18	11
35–39	3	9	23	33
40–44	54	54	58	67
45–49	37	35	14	21
50–54	39	30	11	0
55–59	20	12	6	0
60–64	19	10	3	0
65 and over	14	6	1	1
Total	186	164	159	143

[1] Average for the weeks worked.

NOTE.—See notes under Table IIA.

TABLE IIIB.—*Average hours per week and accumulative distributions of employees by average hours per week*

Average hours per week [1]	1929		1932		1933		1934	
	Number [2]	Percent	Number [2]	Percent	Number [2]	Percent	Number [2]	Percent
20	0	0	0	0	2	1	4	3
30	0	0	5	3	25	16	10	7
35	0	0	8	5	43	27	21	15
40	3	2	17	10	66	42	54	38
45	57	31	71	43	124	78	121	85
50	94	51	106	65	138	87	142	99
55	133	72	136	83	149	94	142	99
60	153	82	148	90	155	97	142	99
65	172	92	158	96	158	99	142	99
85	186	100	164	100	159	100	143	100

[1] Average for the weeks worked.
[2] Number of employees working less than the designated number of hours per week.

Hours per week.—Of the employees 25 percent averaged less than 44, 1929; 42, 1932; 34, 1933; 37, 1934. 50 percent averaged less than 50, 1929; 47, 1932; 41, 1933; 41, 1934. 75 percent averaged less than 57, 1929; 53, 1932; 45, 1933; 44, 1934.

TABLE VIA.—*Maximum hours worked in any one week and distribution of employees by maximum hours per week*

Maximum hours per week	Number of employees			
	1929	1932	1933	1934
Less than 35	0	1	0	3
35–39	0	0	1	12
40–44	28	20	32	61
45–49	19	22	50	42
50–54	24	16	18	10
55–59	13	15	20	9
60–64	20	36	21	2
65–69	16	20	4	1
70–74	19	24	5	1
75–79	14	6	2	1
80–84	16	9	2	0
85–89	6	2	2	1
90 and over	11	2	2	0
Total	186	173	159	143

NOTE.—See notes under table IIA.

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TABLE VIB.—*Maximum hours worked in any one week and accumulative distribution of maximum hours in any one week*

Maximum hours per week	1929		1932		1933		1934	
	Number[1]	Percent	Number[1]	Percent	Number[1]	Percent	Number[1]	Percent
35	0	0	1	1	0	0	3	2
40	0	0	1	1	1	1	15	10
45	28	15	21	12	33	21	76	55
50	47	25	43	25	83	52	118	83
55	71	38	59	34	101	63	128	90
60	84	45	74	43	121	76	137	96
65	104	56	110	64	142	89	139	97
70	120	65	130	75	146	92	140	98
75	139	75	154	89	151	95	141	99
80	153	82	160	92	153	96	142	99
85	169	91	169	98	155	97	142	99
90	175	94	171	99	157	99	143	100
105	186	100	173	100	159	100	143	100

[1] Number whose longest work-week during the year was less than the designated number of hours.

Maximum hours per week.—Of the employees 25 percent had a maximum less than 50, 1929; 50, 1932; 46, 1933; 42, 1934. 50 percent had a maximum less than 62, 1929; 63, 1932; 50, 1933; 44, 1934. 75 percent had a maximum less than 75, 1929; 70, 1932; 60, 1933; 48, 1934.

TABLE VA.—*Annual hours of work and distribution of employees by hours per year*

Hours per year	Hours per week[1]	Number of employees			
		1929	1932	1933	1934
0–259	0–4	0	2	6	3
260–519	5–9	0	7	18	10
510–779	10–14	0	10	29	7
780–1,039	15–19	0	13	33	8
1,040–1,299	20–24	0	20	31	15
1,300–1,559	25–29	5	15	10	22
1,560–1,819	30–34	2	23	7	9
1,820–2,079	35–39	5	18	6	24
2,080–2,339	40–44	56	27	13	43
2,340–2,599	45–49	39	17	3	2
2,600–2,859	50–54	40	10	1	0
2,860–3,119	55–59	13	2	2	0
3,120–3,379	60–64	15	0	0	0
3,380 and over	65 and over	11	0	0	0
Total		186	164	159	143

[1] Annual hours divided by 52.

NOTE.—See notes under table IIA.

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TABLE VB.—*Annual hours of work and accumulative distributions of employees by hours per year*

Hours per year	Hours per week [1]	1929		1932		1933		1934	
		Number [2]	Percent	Number [2]	Percent	Number [2]	Percent	Number [2]	Percent
260	5	0	0	2	1	6	4	3	2
520	10	0	0	9	5	24	15	13	9
780	15	0	0	19	12	53	33	20	14
1,040	20	0	0	32	20	86	54	28	20
1,300	25	0	0	52	32	117	74	43	30
1,560	30	5	3	67	41	127	80	65	45
1,820	35	7	4	90	55	134	84	74	52
2,080	40	12	6	108	66	140	88	98	69
2,340	45	68	37	135	82	153	96	141	99
2,600	50	107	58	152	93	156	98	143	100
2,860	55	147	79	162	99	157	99	----	----
3,120	60	160	86	164	100	159	100	----	----
3,380	65	175	94	----	----	----	----	----	----
4,160	80	186	100	----	----	----	----	----	----

[1] Annual hours divided by 52.
[2] Number of employees working less than the designated number of hours per year (or hours per week).

Hours per week.[1]—Of the employees 25 percent average less than 43, 1929; 22, 1932; 13, 1933; 23, 1934. 50 percent averaged less than 48, 1929; 33, 1932; 19, 1933; 34, 1934. 75 percent averaged less than 54, 1929; 43, 1932; 26, 1933; 41, 1934.

TABLE IVA.—*Annual earnings and distributions of employees by dollars per year*

Earnings		Number of employees			
Dollars per year	Dollars per week [1]	1929	1932	1933	1934
0–259	0–4	0	2	10	2
260–519	5–9	0	12	23	10
520–779	10–14	0	9	34	7
780–1,039	15–19	0	19	38	7
1,040–1,559	20–29	2	41	27	42
1,560–2,079	30–39	14	30	12	34
2,080–2,599	40–49	30	22	7	35
2,600–3,119	50–59	53	17	5	6
3,120–3,639	60–69	39	6	3	0
3,640–4,159	70–79	25	4	0	0
4,160–4,679	80–89	17	0	0	0
4,680 and over	90 and over	6	2	0	0
Total	----	186	164	159	143

[1] Annual earnings divided by 52.

NOTE.—See notes under table 11A.

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TABLE IV B.—*Annual earnings and accumulative distributions of employees by dollars per year*

Dollars per year	Dollars per week [1]	1929		1932		1933		1934	
		Number [2]	Percent	Number [2]	Percent	Number [2]	Percent	Number [2]	Percent
260	5	0	0	2	1	10	6	2	1
520	10	0	0	14	9	33	21	12	8
780	15	0	0	23	14	67	42	19	13
1,040	20	0	0	42	26	105	66	26	18
1,560	30	2	1	83	51	132	83	68	48
2,080	40	16	9	113	69	144	91	102	71
2,600	50	46	25	135	82	151	95	137	96
3,120	60	99	53	152	93	156	98	143	100
3,640	70	138	74	158	96	159	100	----	----
4,160	80	163	88	162	99	----	----	----	----
4,680	90	180	97	162	99	----	----	----	----
6,500	125	186	100	164	100	----	----	----	----

[1] Annual earnings divided by 52.
[2] Number of employees earning less than designated number of dollars per year (or dollars per week).

Dollars per week.—Of the employees 25 percent averaged less than 50, 1929; 16, 1932; 12, 1933; 22, 1934. 50 percent averaged less than 59, 1929; 30, 1932; 18, 1933; 31, 1934. 75 percent averaged less than 71, 1929; 45, 1932; 25, 1933; 42, 1934.

Mr. WELCH. They have leveled up the lower-paid earners by leveling down the higher-paid workers?

Mr. DENNISON. That is right; that has been done; and the total purchasing power created has been nothing as far as we can see. Of course, the purpose of the National Recovery Act, the avowed purpose of it in the preamble of the act, was to increase purchasing power.

Mr. WOOD. Yes; that method is against the purposes and intent of the act.

Mr. DENNISON. I can see it is against the intention of the act.

Mr. WOOD. And against the intent of Congress when it passed the law.

Mr. DENNISON. I believe that to be true.

Mr. WOOD. When Congress passed this law the general understanding was, and even the intention of Congress was, not to reduce any wage, but to raise the wage of the lower-paid workers and to have a general elevation of wages.

Mr. DENNISON. We feel that it has been a misadministration of the law rather than the law that has caused that condition.

Mr. WOOD. Yes; the Members of Congress realized that you cannot create increased purchasing power by merely leveling up and down the wage and when the company does not pay out more wages in the gross payment.

Mr. DENNISON. I would like to make this statement: The production in the Detroit district of all the industrial designing engineers is now about 50 percent of normal as compared to 1928 and 1929.

Mr. WOOD. The production as compared to 1928 and 1929 is more than 50 percent of the greatest production, isn't it?

Mr. LESINSKI. Mr. Denison, talking about production, I find in a statement made last week in the press which I have here that automotive production has gone up to about 75 or 80 percent already within the last week.

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Mr. DENNISON. I have reference to the employment of designing engineers in those industries, as I said in my statement. My statement was with regard to the employment of designing engineers. I presume those figures are correct, Mr. Lesinski, that there is about 75 percent of the normal employment as compared with 1928 or 1929, but as I have pointed out in my testimony, there has been a centralization of work. They have combined several drawing rooms together into one.

Mr. LESINSKI. Into mass production?

Mr. DENNISON. And speeded up the men, too. The total output of these industries may be more than it was in 1933, or 75 percent of what it was in 1928 or 1929, yet less men may be employed.

Mr. WOOD. That is through the consolidation of designing rooms?

Mr. DENNISON. Yes; and it is also due to the utilization of smaller units.

Mr. LESINSKI. Last week's record of production shows that the automotive industry produced more cars than it ever did, except in the year 1929, in 1 month. Otherwise it has produced more cars than it ever did.

Mr. DENNISON. In our studies of technological progress our engineering society has come to this conclusion—of course, that is a part of our daily work, I might mention in passing—we have come to this conclusion, that if we were producing the same amount of wealth that we were producing in the United States in 1928 there would be as many as 5,000,000 less men employed.

Mr. LESINSKI. The only correction for that is this: All of the manufacturers claim they are putting more men to work, but we all know they are not. The only way to keep people employed is, first, to give them all seniority rights, give the older employees seniority rights, first, and then commence with a flexible 30-hour week; in other words, bring it up or bring it down, whenever it is necessary, the number of hours that are necessary for employment. You want not only a living wage but a saving wage. When you get to that point, then the next step is to curtail production in such a way that they would have to slack all the lines in every plant, and they would have to take the high-speed pulleys off of every machine and put the slow-speed pulleys on that they used to have, and if they would do that Detroit would not know what unemployment is. And if industry did want to cooperate with the Government, they could come out of the depression within 60 days, but industry does not want to cooperate. They want to grab all these small plants; they want to eliminate everything and grab everything into their own hands. That is the tendency today. And to help that thing along, the N. R. A. has helped it by being distorted by the manufacturers. Isn't that the way the thing looks in Detroit today?

Mr. DENNISON. It does seem as though the instinct to grab power on the part of the large units in industry was, as you say, shaping certain policies in order to drive out the competition of the smaller fellows. That is shown in the percentage which is given there. In 1928 and 1929, where the big three manufactured 77 percent, last year they manufactured 88 percent.

Mr. LESINSKI. Let us take any assembly line. At one time an assembly line went at the speed of about one-half a mile per hour,

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didn't it? I understand it is today about 2 miles per hour. In other words, it is speeded up three times. Isn't that the reason for unemployment?

Mr. DENNISON. It has been speeded up tremendously, and it is a reason for unemployment.

Mr. LESINSKI. Let us take another thing. An inspector today has to inspect 385 doors in 1 hour in a large plant, which is an impossibility, to have good inspection; 385 units in 1 hour. In years gone by he probably inspected 50 or 60. How many men did that throw out of employment?

Mr. DENNISON. It threw out plenty of them. Mr. Lesinski, they are even going better than that. Through the use of the photoelectric cell now certain inspection operations are doing away with men entirely.

Take certain pins, for instance. They have an inspection device now invented so that as these pins pass a point put into a moving track, this photoelectric cell gages them to within about two ten-thousandths part of an inch; in other words, two-tenths of one-thousandth of an inch. It gages them that close and rejects the inferior ones and allows the others to pass the photoelectric cell, and there is no one at all necessary to operate that.

Technological progress, as I said before, has made it so less and less men are employed to do any task. However, if we were to go into a real discussion of the social effects of technological progress, there was a previous witness here who testified something about the improvements on machines. But when he talked about the improvements on machines, I want to say in passing, that the social effect of technological progress, if it were passed on to the consumer rightly, would be a blessing. If it is all grabbed by the manufacturer or the banker or whoever is in a position to benefit by it, if there is too much profit piled up between the producer and the consumer, it can be a curse.

If we were to destroy all of our machinery tomorrow and go back to the methods of making stuff by hand, and if we had a capital investment of $250,000,000 demanding an interest rate, a profit rate, of 6 percent upon it, and if we had to produce at the measured hourly rate and had to increase the man-hours going into the production of these commodities, it would raise the price of these commodities. The machine should cheapen the price of commodities; it should be a blessing to humanity. There is no reason for us to work 6 hours to do a task that we can do in 3.

The CHAIRMAN. What would you do? Suppose that a manufacturer could put in a machine that would only employ 5 men, where now they have 500, and you could buy your shoes for 40 cents a pair, the same shoes that you are now paying $6 or $7 for. How would that take care of the employment of the people? Even though they only had to pay 40 cents a pair for shoes, where would they get the 40 cents to pay, all those people who were thrown out of work?

Mr. DENNISON. I will answer that in this way: Obviously, two things can be done, both to increase pay and shorten hours. In other words, if we could manufacture commodities that rapidly, hours could be shortened and more people put to making shoes, and the fact that the shoes were cheap would allow them to buy more shoes.

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The CHAIRMAN. Take the cigar industry, for instance. It was testified here a couple of years ago that one machine now can turn out more cigars than I don't know how many workers. Do you remember how many workers were formerly employed?

Mr. WOOD. Twenty-five or thirty.

The CHAIRMAN. Suppose that you could buy a 10-cent cigar for a cent. What are you going to do with those people that are thrown out of work? In other words, no matter how cheap your prices will go—if you could buy butter for 5 cents a pound, you have got to get the money somewhere to buy it, haven't you?

Mr. DENNISON. That is very true.

The CHAIRMAN. Won't you come back to unemployment insurance, and come back to the profits of the manufacturer that can sell you those shoes and still make a big profit on those shoes or cigars, and won't you have to devise some means of getting that money to the people?

Mr. DENNISON. Mr. Chairman, the problem of unemployment insurance is something that we heartily endorse. I do not want to be misunderstood on this. But unemployment insurance is only a means of mopping up a mess after it has been made.

The CHAIRMAN. What is the solution of the machine proposition?

Mr. DENNISON. Very well; I will go into that.

Let us notice what has been done by the machine. The machine has made is possible to reduce hours of labor and has made it possible to reduce hours much more than we have reduced them. The machine is a tremendous dynamic force, enforcing certain social changes upon us, but unfortunately we do not adopt these social changes as fast as they are necessary.

The CHAIRMAN. I understand what you mean.

For instance, take these lamps up here over our heads. I used to work in the Edison lamp factory in East Boston, and they had all these machines where 2 girls would be on 1 machine. Then they had another operation where two more girls would be on that. Then they had the packers and all these different things. Then just before I left that concern they put in a machine which would do the work, I think, of eight girls; in other words, combine those operations. Now, I think they had 600 or 700 working there when I first went there, and then I think they went down to somewhere less than 100. What will you do with those 500 girls, when other concerns that are making lamps or making shoes are doing the same things with machines? The department stores are putting in things which do away with cash girls, and all that sort of thing. What are you going to do with those people?

Mr. DENNISON. I will tell you what we can do with them, but you will have to follow me for just a minute.

As the machine makes it possible for us to create more wealth with less hours, the thing that has been done is to keep on working a certain amount of labor the same amount of hours, and lay off the surplus labor, whereas what should be done is to divide up the work among the employees they have and shorten the hours.

Mr. WOOD. And retain their purchasing power?

Mr. DENNISON. In other words, the machine makes it possible to produce and consume more goods; but today we are not using our

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productive capacity, not because we do not want to consume those goods or not because there is no need for those goods, because the American public right now is doing without shoes when they need them and doing without clothes when they need them, and they are doing without the products of the machines that they would desire and the machines are not being worked to their capacity——

The CHAIRMAN. Your idea, then, is to take those four girls who were laid off and allow them to stay on and work for 3 days a week instead of 6 days, and pay them the same wages for those 3 days that they would have earned in 6?

Mr. DENNISON. Yes.

The CHAIRMAN. And put the other two girls on for the other 3 days, thereby keeping up purchasing power?

Mr. DENNISON. Yes.

The CHAIRMAN. How about the price to the consumer?

Mr. DENISON. Of course, involved in the question you have just asked me is a very significant thing.

All that I have here is a sketch which would enable me to talk about it, but I will try to describe this thing verbally. If we could take the total annual wealth produced in any one year, and if we could picture the machine that produced the annual production of wealth, if we could picture the mines, minerals, and factories of America as one valid industrial machine, we would find that a certain number of our population are machine operators, so to speak—those people who actually operate the industrial machinery of America, the laboring groups, including the mechanical engineer and all who give some direct effort toward producing these products. We would find that every commodity is just the same as the total commodities. They all have to carry these same costs. In other words, a pair of shoes carries the cost of the direct labor involved in making them; they carry the costs of clerks, the railroad people engaged in transporting these commodities; they carry the cost of school teachers, doctors, lawyers, and so forth, who keep up the health of these workers and who educate the children of these workers and who administer to that group.

The CHAIRMAN. No; I do not agree with you. That is what they ought to do, but they do not do that. They cannot afford doctors at the wages they get now.

Mr. DENNISON. That is true. But the cost of each commodity has to carry this social overhead. So we will take all commodities as a whole that this machine produces, and we will find, viewing the United States as one great machine, this industrial Nation, that there is labor that tends this machine, there is a middle class that are the upkeep crew, so to speak, the doctors, lawyers, school teachers, merchants, and so forth, all performing services, and there is another class, there is a class that owns this industrial machine, a class of people who are executives, and who are people who have a title of ownership to the industrial machine of the country, and in return for their services they exact wealth from the machine in the form of profits or rents or interest, and so forth.

Now, labor, for instance, out of the total of commodities produced—I have introduced some evidence here that it gets 36 percent of the annual production of wealth. In depression times I don't know what their savings are, but in normal times their savings were

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about 3½ percent. At this time we are producing $50,000,000,000 worth of wealth a year. Assuming that labor was given $18,000,000,000 as its share for producing that wealth, and that labor, as a whole, could save $1,000,000,000 out of that $18,000,000,000, I am going to put that $1,000,000,000 down as unconsumed commodities, for this reason: Labor can buy back the products of this industrial machine just as much as they receive in wages for producing those commodities, and if they have in savings-bank accounts, or if in any way they did not use their total wages in buying back commodities from the industrial machine, there is a balance there of unconsumed commodities. I am trying to answer your question, remember.

The middle class—I don't know what share of the national wealth falls to them, but I know approximately what it is. I know it is somewhere around 25 percent, and that would mean that from an annual production of wealth of $50,000,000,000, they would get perhaps $12,500,000,000, and if they saved, as they did in former times, about 5 percent of what they have been paid for their services in dollars, if they saved about that much, there would be a band of unconsumed products of this machine that they would not buy, because they will buy as much as the money which they have paid for their services allows them to buy, less their savings-bank accounts, or whatever form their savings may take. If they were paid $12,500,000,000, we will pay, and saved $1,500,000,000, they would have consumed $11,000,000,000 of that year's commodities that are produced by this industrial machine, and their savings-bank deposits would be $1,500,000,000.

If the capitalist should receive the remainder, or $19,500,000,000, and if he took from his part of the annual production of wealth and set aside for replacement of machinery or expansion of industry, or depreciation of plant equipment, or for profits, or for the various uses which a capitalist would make of his surplus, above what he lived up to, out of that $19,500,000,000—if he set that aside for those things and still has a profit, that profit that he has left will represent unconsumed portions of that year's annual production of wealth.

Then, on every year's production of wealth, even as it is going now, if he made an investment of $250,000,000,000, 6 percent, he would have to make a profit of about $15,000,000,000, as it is going this year, if he got 6 percent on an investment of $250,000,000,000, which it has been estimated is the amount of money invested in the United States. That is, the title to that much property has been measured in dollars at that amount. Of course, of that amount, of that nineteen and a half billions that he gets, the capitalists, although they are small in number, do live up to a considerable amount of it; they spend a lot of it; they consume a lot of commodities. They may maintain two or three homes. They may have one in Florida, one in the Catskill Mountains, and may have a yacht, and they may maintain a small army of servants.

But I want to point this out, that if the capitalist used up his entire share, or what he was able to grab from the annual wealth, there would be no profit, there would be nothing for him to set aside for investmentments, et cetera.

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So that under any system that we would use as a means of distributing wealth, we must pay labor, we must pay the middle class, enough so that they can consume a goodly portion of this annual production of wealth, and the profits of the capitalists must be narrowed very much, they must be a very small margin unless we can supply extensive foreign markets.

It has been pointed out by some people, and they have dwelt on it considerably, that it does not seem so necessary for us to find foreign markets; that we can have a contained national economy, an economy within ourselves, our own national family. But that is not true, because these unconsumed portions of the national wealth, in order to be transmitted into tangible wealth, which the owner of the industrial machine wants to have—and you must realize that this unconsumed portion has yet to be converted into currency; it is still in the form of shoes, food, clothing, automobiles, or whatnot; they are still commodities yet; these commodities have not been changed into stocks, bonds, or currency, and the things which the capitalist can use for replacement or reinvested wealth. So it is necessary, then, that in labor legislation the share that labor gets shall be increased; it is necessary that in legislation enacted by the United States Congress these things be borne in mind, that in order to take advantage of technological progress these unconsumed portions of wealth must be smaller and smaller, and the share of the national production by labor must increase, or else we will just be clogged with more and more goods on the market. That is what is happening now. The machine is turning out articles and goods, and labor is unable to consume those goods, because it does not get enough wages to buy them back.

If my talk has introduced any particular questions there that are not clear, I would like to answer them. I think I have about covered the field.

Mr. WOOD. I will say that we certainly have enjoyed your very lucid testimony here, and I think it will be a great contribution to solving the problem by this type of legislation.

Mr. DENNISON. Thank you.

Mr. WOOD. I have certainly enjoyed your testimony. I think it is the finest we have had submitted to this committee at the hearings on any and all bills at this session.

Mr. DENNISON. Thank you. I will be glad at any time to be invited back on labor legislation.

Mr. LESINSKI. Mr. Chairman, with your permission I would like to make a statement in behalf of Mr. Arthur E. Greer, president of Hudson Local Union, No. 2, Associated Automobile Workers of America, and submit other testimony of private individuals and affidavits. I would like to have this testimony inserted, Mr. Chairman, after Mr. Dennison's testimony during the hearing last Friday.

The CHAIRMAN. You may make whatever statement you desire, Mr. Lesinski, at this time and it will be incorporated in the hearing of last Friday at the proper place.

Mr. LESINSKI. I would like to say, Mr. Chairman, that Mr. Greer was in Washington, but not being able to wait for the hearing, he left all of his data with me and asked me to present it to the committee,

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which I am doing at this time. This is a statement by Mr. Arthur E. Greer, president of the Hudson Local Union, No. 2, Associated Automobile Workers of America [reading]:

To whom it may concern:

I, Arthur E. Greer, the signee of this statement, wishes to set forth the following facts relative to the formation and the workings of the Hudson Industrial Association (company union), instituted in the Hudson Motor Car Co. during the month of September 19, 1933.

Previous to the formation of the company union there was called into one of the executive offices of the Hudson Motor Car Co. various groups of men, of which I was one, to discuss the formation of an industrial association. The date of this meeting was sometime in late August or early September of 1933.

This group of men, who had been assembled, were called to order by representative of the management, Mr. R. J. Megargle, who spoke to the men, giving them a brief outline of a set-up inaugurating the industrial association, giving in detail the plans and working along with the constitution and bylaws of the industrial association. This constitution, which had its inception some time prior to this meeting was given to the men, none having taken part in the writing of this document. During this meeting there were elected three men to supervise a proposed election to be conducted and paid for by the Hudson Motor Car Co., of which I was of the named chairman. The election for representation in this association followed in due course.

At the time these elections were conducted at the Hudson Motor Car Co. plant there had been set up during the months of June and July 1933, a plan of representation by an outside organization, known as "Federal Labor Union No. 18312" affiliated with the American Federation of Labor.

During the ensuing months representatives of the company union met freely with the management's special representative to discuss ways and means to hold dances and further activities along the benevolent and fraternal course.

Until the month of March 1934, the management refused emphatically to deal with members of the Federal Labor Union No. 18312 which finally resulted in taking the case before the National Labor Board at Washington, March 14, 1934. Further complications followed with the management and this group of men which finally negotiated by the settlement of March 25, 1934, by the President in Washington.

During the month of July 1934, members of Federal Labor Union No. 18312, by 984 vote to 5, favored the secession of that local organization in the American Federation of Labor.

On July 28, President William Green of the American Federation of Labor accepted the resignation of its officers and members and charter of that organization.

On August 2, 1934, there came into being an independent organization which later affiliated with the Associated Automobile Workers of America, known as "Hudson Local Unit No. 2".

On July 17, 1934, the National Automobile Labor Board issued the following statement:

"Automobile labor board requests the managements of plants operating under the statement of the President of the United States, dated March 25, 1934, in which representation plans exist to post this notice on the bulletin boards of those plants. Automobile labor board has suspended the nominating and electing in plants having representation plans of representatives under those plans until this board shall have promulgated rules and regulations.

"LEO WOLMAN, *Chairman.*
"NICHOLAS KELLEY.
"RICHARD E. BYRD."

During the month of August 1934, on the 27th and 28th days, the writer communicated with President Roosevelt, Lloyd Garrison, Frances Perkins, relative to the proposed elections that were being conducted in the Hudson Motor Car Co. plants against the expressed ruling of the automobile labor board.

On August 30, 1934, this organization petitioned the National Automobile Labor Board to conduct the elections for representatives, which were held on August 28 and 29 by the Hudson Motor Car Co. We submitted to the board

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at that time a brief embodying the following 10 points relative to the election held by the Hudson Motor Car Co.:

First, that Mr. R. J. Megargle, agent of Hudson Motor Car Co., being in employ of said company, did on August 28 and 29, taking active part in the setting up of an election board, and did use his position to have the election put across contrary to the decision of the automobile labor board of July 17, 1934.

Second, ballots printed and used by the committee for the election were printed at the expense of the Hudson Motor Car Co. On the reverse side was the following notation:

"Ballots shall be counted under the direction and supervision of the election committee and a special representative appointed by the management."

Third, all booths, balloting boxes, and so forth, were built and furnished by the Hudson Motor Car Co.

Fourth, the election was held on the sidewalks surrounding the plant near factory gates with company watchmen acting as guards.

Fifth, the election held at the axle plant was conducted between the buildings on or near a railroad siding on company property.

Sixth, the check-off system was used at axle plant as well as in the other two plants, and all men not voting by the middle of the afternoon were told to do so by their supervisors.

Seventh, foremen at the main plant and at the body plant came on the outside near the booths to see and notice who of their employees were voting.

Eighth, the management hired into the plant additional men for the day to act as relief men for the men who voted, being paid for their time by the Hudson Motor Car Co. These men were the first to vote in the morning at the body plant.

Ninth, at the body plant many of the men were told that if they didn't vote they were putting themselves "on the spot."

Tenth, the management actively helped the committee in their preparations for the election with their agent, Mr. R. J. Megargle, sending employees to various parts of the country to investigate their company unions.

The above 10 points as herewith stated were incorporated in a letter to the board on August 30, 1934.

On September 18, 1934, a statement of the automobile labor board was issued as follows:

"On July 17, 1934, the board made an order suspending nominating and electing representatives under representation plans. Through misunderstanding certain elections have taken place, the fact of which is not clear. In order to remove all misunderstanding, the board rules that these elections are not valid.

"The board rules further and is as a temporary expedient and in order to avoid confusion until the board shall issue rules and regulations and until elections under those rules and regulations shall take place under the supervision of the board, the management may meet with the existing representatives as unofficial interim representatives of such employees as wish to have these representatives act for them.

"In order to inform all interested employees of this ruling and to avoid other possible misunderstanding, the board directs that the order of July 17, 1934, and this order be posted on all bulletin boards in all plants.

"Dated Detroit, Mich., September 18, 1934.

"LEO WOLMAN, *Chairman.*
"NICHOLAS KELLEY.
"RICHARD E. BYRD."

Since the semirecognition by the board of this set-up of these elections, this local union has been unable to satisfactorily deal with the management in way of conferences regarding hours, wages, and so forth, but have been dealing in a discriminating manner with the representatives so elected at that time.

The call for elections was issued by the National Automobile Labor Board during the month of January 1935 with the date for primary election being set as February 1, with final elections February 15.

In conducting both these elections they were held within the plant with representatives of labor having little if no part in the setting up of certain and definite rulings governing these elections.

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This particular local organization of Associated Automobile Workers of America protested to the labor board in the manner in which the primary ballots were printed. Rather than have the free choice of accepting or rejecting any particular labor group affiliation by the use of separate ballots, the worker was forced to name any particular man with any particular labor group affiliation. This, of course, brought confusion into the ranks of a great many of the voters. For instance, men were nominated in their respective districts receiving votes from the workers, some wanting him to represent them for one labor group or for another labor group. However, in the conducting of the elections under Government supervision, the Government men, thus not knowing the actual conditions as existed in the plants, could not easily detect various forms of discrimination and coercion on the part of supervisors.

It was, in our opinion, as we so stated to that board, that these elections should be conducted outside of the plants in neutral territory, considering the environments in the plant on election day had much to do with the matter of choice in selecting one's candidate.

Since the holding of these elections, much confusion has resulted. In just one particular plant the representatives formerly elected during the month of September in the company union are to play in matters of representation. It is the contention of the industrial association that representatives elected during the September election will continue to function as in the past. This, however, is contrary to the opinion and rulings of the Wolman Board.

In present set-up of company union the company still continues to dominate and dictate policies of its membership. All literatures are being printed at the expense of the Hudson Motor Car Co., men are being paid for all time actively engaged in carrying on work of the association, various meetings held in shops, appearances before the labor board, and other meetings beyond code hours are being paid for by the company. We ask that investigation of these statements concerning the paying of members of the company union be investigated to prove their authenticity.

In the election just held by the automobile labor board the Hudson Motor Car Co. did actively participate in the printing of literature, paid for at their expense, and in other ways encroached upon the matter of free choice of representation with the workers. It is the opinion of the membership of this association that to in any way sanction company-controlled unions in any way, shape, or form would be only to put upon the workers a mental and physical hazard that will ultimately tend to further disorders in the industry. The part that has been played in the past by these company-controlled unions has in many instances and particularly in the plants of the Hudson Motors created much unrest, due to favoritism that is being shown by members of the company union. Matters of seniority and dependents with the workers in many instances are being ignored by the manufacturers to give preference of employment to members or would-be members of the company union. To foster and promote unions of this type tends as a social and economic detriment to the welfare of the automobile workers.

Therefore, it is the plea of the automobile workers as represented by the Associated Automobile Workers of America that Congress should seriously consider the enactment of such legislation that would forbid the formation or continuation of company-controlled unions, in which the manufacturers contribute morally, physically, and financially their continuance.

ARTHUR E. GREER.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn before me this 22d day of February 1935.

MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

Mr. LESINSKI. Then I have here Mr. Greer's brief, which is as follows [reading]:

GENTLEMEN: In order that I may qualify myself to appear before this committee as a representative of labor, I wish to set forth the following facts:

I, myself, have been employed in the automobile industry at the Hudson Motor Car Co. from May 1927 to March 1934, at which time I was granted a

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leave of absence by the company that I might assume the duties as business agent of the local organization which I now represent. During that period of time I was employed by the Hudson Motor Car Co. as a machine builder and machine repairman. During that period of time it was my duty as such to carry out the various work necessary in shop practice changes and engineering changes and during my employment I have worked in almost every department covered by plant maintenance of machinery and equipment.

Being invited to appear before this committee that this committee might better be informed by workingmen themselves of the actual conditions which prevail today in the automobile industry relative to the 30-hour-a-week bill (H. R. 4884), we submit to this committee these facts:

The work week of 30 hours in both technical, feasible, and advisable in the industry. It would encourage the substitution of two shifts, making it possible for the distribution of employment for a greater number of automobile workers.

In 1929 the average employment for the automobile industry was 226,000 employees. The peak of production during the month of April that year reached an employment of 263,000 people. Granting that an assumed production of 1,800,000 automobiles for the 1935-model cars or a 48-week year would result in the employment of 257,000 men and for a 40-week period of 308,000 men. This is based on the estimated average man-hours per car of 206—these figures have been estimated by the United States Bureau of Labor Statistics. Under the same estimate for the 40-hour week the assumed production of 1,800,000 cars at 206 estimated average man-hours per car the industry would employ approximately 230,000 men.

The matter of increased productivity since the 1930 and 1934 model cars should receive serious consideration by this committee. In 1930 it is estimated by the United States Bureau of Labor Statistics that it required in the production of 1 car per day 24 men. In 1934 to produce the same car required 16 men, showing an increased differential in production, causing the release of 8 men, or 33 percent in the total number of men employed. If, on the other hand, there was an increased production of 100 percent in the volume of cars produced per year that 3,600,000 cars would be produced, the average man-hours per car would require 185 man-hours per car. That would equal to the peak production in 1929 for a 48-week year of 30 hours per week. There would be employed in the industry approximately 450,000 men and for a 40-week year 550,000 men.

In plants studied by the Bureau of Labor Statistics during the period from 1928 to 1932 the matter of certain and definite hours worked by the men in the industry were so uneven that men worked for a 50-week period showed a differential from 32 hours to 72 hours per week. These records, if properly investigated, will show that there should be some definite limitation in regard to hours worked per week.

In 1932, approximately 50 percent of the workers in the industry worked less than 32 hours per week; approximately 80 percent worked less than 48 hours. The variation in these figures show that in some departments long hours were necessary, while in other departments in the industry shorter hours worked were more or less satisfactory.

Accordingly we suggest the following provisions:

First, provision must be made to limit the working shift in production to two shifts per day and the hours of each shift limited to a maximum of 7 hours and a minimum of 6 hours.

Second, the basic week for employees engaged in the production of automobiles, parts, et cetera, shall not exceed 30 hours in 1 week; however, to limit seasonal peaks and valleys in the industry and to spread the work over a greater period of time, the industry be limited to increase of hours of work an additional 5 hours per week, only after the employer has asked for an additional 5 hours from the Division of Research and Planning of the National Industrial Recovery Administration provided, however, that all such overtime be paid for at the rate of double time.

Third, the basic week for employees engaged in the preparation, care, and maintenance of the plant, machinery, and facilities of and for production, shall not exceed 35 hours in any 1 week. In case of break-downs and emergency, which would necessitate the laying off of production workers, repair crews may work to correct such emergencies, et cetera, without the approval of the Planning Department of the National Industrial Recovery Administration, with the proviso

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that all work of overtime in all such emergencies shall be compensated for at the rate of double time.

It has been the common practice for the industry to take from production men at the close of the production season who have worked there longer hours than the present code permits, that these men, listed as class D men, are working as high as 70 and 80 hours per week, but in the year of 1934 in the month of January the Hudson Motor Car Co. employed approximately 4,000 men, and the rise of employment went to the employing of approximately 17,000 men in the month of April, after which the working force was reduced to approximately 3,000 men in the month of June. That during this period of production there was working in other plants two and three shifts of workers, and since the month of June there has been on the welfare of charitable organizations something like 10,000 workers from this plant alone. These men have averaged something like an hourly wage of 60 cents per hour and that during the past 5 years these men have not averaged over 4 months per year.

The above figures, stating approximately the number of men employed during the months from January to June 1934, has been consistent in other years, notably since 1930. Prior to the 1930 year employees averaged approximately 8 months per year. These years prior to 1930 men worked during the 8-month period an average of 50 hours per week.

To substantiate the aforegoing facts, I would respectfully submit to this committee a number of affidavits to show increased production. In one particular department, namely the paint shop where there are employed duco sprayers, polishers, and sanders during the 1935 production season, rear fenders being polished in 17 minutes per fender, time allowed has been reduced to 12 minutes per fender. Ten men who produced 280 pieces in 8 hours are now being increased to 308 pieces, being produced by 7 men. Time given for polishing front fenders has been reduced from 28 minutes to 24 minutes. The time allowed for polishing one-half of hood in March was 23 minutes, in February 18 minutes allowed. In March 1934, repair work done by these workmen was paid for at a given rate, February this year the repair work is being done by the men in addition to their regular hourly output without additional compensation. In March 1934, sanding and polishing of running board required 12 minutes per car; February 1935, the same job was speeded up to 8 minutes per car. In August 1934, sanding and polishing the trunks required 1 hour; in February 1935, the same operation has been speeded up to 48 minutes. In February 1935, new polishing machines are now being installed to cut the time an additional 10 percent.

In the trim department the installation of the all-metal top in one department alone has put out of work 16 men and 8 girls. In 1934, in this same department, two relief men were used in the department and in 1935 there are no relief men.

I am submitting an additional affidavit from an employee in the export shipping department who says there are approximately 110 men employed in that department, 11 of these men are on supervision. Some of these men are working as many as 11 and 12 hours per day. In one particular case a man usually starts his man about 10 a. m. or 12 noon, he himself starting at 8 a. m., the regular starting time. The unequal distribution of the man-hours in this particular department has shortened the average number of men being employed for the amount of money which had been allocated for that work by the employing of these men at longer hours.

To show additional speed-up in the manufacturing of the cylinder block of the 6-cylinder car:

In November 1934, 40 men produced 12 blocks per hour; December 1, 1934, 78 men produced 26 blocks per hour; December 15, 1934, 110 men produced 40 blocks per hour; December 26, 1934, 115 men produced 42 blocks per hour; February 9, 1935, 115 men produced 43½ blocks per hour; February 11, 1935, 126 men produced 48 blocks per hour.

At the November 8 production 40 men producing 12 per hour should produce the differential of 160 men for 48 units. This shows the increased production with the decreased manpower.

Time study.—There are employed in the various divisions of the plant time-study men who with the use of slide rules and stop watches gage a man's work in small quantities, not figuring in break-downs, the regrinding of tools, and otherwise necessary starts and stops in a day's work. Time-study men usually spend the morning hours in determining the amount of minutes required to

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produce certain units and computes from that figure the production for the entire day. In arriving at their conclusions they do not take into consideration that a man is hardly able to produce in the late hours of the day the same quantity that was produced in the early hours of the day.

I would like to quote from the Henderson Report, book 1, page 46, as follows:

"The competitive conditions of the past few years have reached down to these time-study men. They have been forced to show how to make inequitable reductions in working time to hold their own jobs and from setting jobs on an efficient basis they have come to set them on a speed-up basis that found production demand beyond human capabilities to produce day after day.

"This speed up, combined with the uncertainty of employment, is making the industry a different place to work even though hourly wages have once more returned to predepression status."

The above quotation from the Henderson report is certainly true in the plants of the Hudson Motor Car Co. The reason this condition does exist is because of the great number of men who are unemployed.

I have been authorized by the membership of the various local affiliates of the Associated Automobile Workers of America that the aforegoing facts set forth in this brief is very similar to the conditions which exist in their own particular plants; namely, the plants of the Fisher Body and Oldsmobile at Lansing, the General Motors Truck, Pontiac, and the Motor Products, and Plymouth Motors, of Detroit.

It is quite evident that as conclusive as the Henderson report bears out the intense speed ups and characteristics of the automobile industry that further investigation to give a fuller report and a more perfect picture of the situation perhaps is advisable. On the other hand, it is our belief that beyond any reasonable doubt a report of the Henderson Commission proves that the 30-hour week is both feasible and advisable in the automobile industry.

I am submitting to this board the various affidavits covering certain points of this brief which I believe will be very interesting to this committee.

I would like to submit in closing to this board a part of the message from the President of the United States to the Congress of the United States on June 8, 1934, in which the President stated:

"The third factor relative to security against hazard and vicissitudes of life—fear and worry based on unknown danger contribute to social unrest and economic demoralization if, as our Constitution tells us, our Federal Government was established, among other things, to promote the general welfare, it is our duty to provide for that security upon which welfare depends."

It is our opinion that much can be done to alleviate social unrest and economic demoralization by enacting this bill, H. R. 4884, which is now in your hands.

ARTHUR E. GREER.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 21st day of February 1935.

[SEAL] MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

Mr. LESINSKI. Attached to Mr. Greer's brief are a number of affidavits of workmen showing the speeding up in various departments.

The next thing that I would like to submit are a number of affidavits of different employees.

(The affidavits above referred to are as follows:)

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HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 18, 1935.

To whom it may concern:

The following shows the speed-up in department No. 930 during 1935 production season among polishers and sanders:

FENDERS

Front fenders:	*Halves*
17 minutes each, 8 hours	28
14 minutes each, 8 hours	34
12 minutes each, 8 hours	44

Ten men produce 280 pieces; 7 men now produce 308 pieces in 8 hours.

Rear fenders:	
28 minutes each, 8 hours	17
24 minutes each, 8 hours	20

Hourly rate of pay was at an average rate of 89 cents per hour, and was increased to 92 cents per hour.

JOSEPH H. ALDERMAN.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 18th day of February, A. D. 1935.

MELVIN A. OWEN,
Notary Public in and for Wayne County.

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 18, 1935.

Hudson hoods, sand and polish:	*Minutes*
March 1934, time of half hood	23
February 1935, time of half hood	18
Terraplane hoods, sand and polish:	
March 1934, time of half hood	19
February 1935, time of half hood	16

March 1934, repair work was done by paid repairmen.
August 1934, repairs was done by each one on polishing.
February 1935, repairs was done by each one on polishing.
Doing repair work adds 1 hour's work per day.

Trunks, sand and polish:	
August 1934, sand and polish (hour)	1
February 1935, sand and polish (minutes)	48
Running board:	*Minutes per car*
March 1934, sand and polish	12
February 1935, sand and polish	8

Polishing machines.—February 1935, new polishing machines are now being installed to cut the time 10 percent.

KIRBY HATT.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 18th day of February A. D., 1935.

[SEAL] MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

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HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 18, 1935.

To whom it may concern:

The following shows in detail the speed up in department no. 930 of Hudson Motor Car Co., in work being done by sanders and polishers on hoods:

GANG WORK

Hudson hoods, sand and polish:

	Minutes
Time on half hood:	
January 1934	33
February 1934	23

Repairs were paid for extra.

September 1934, repair price was taken away and had to be done along with other work.

Terraplane hoods:

Sand and polish:

January 1934	30
February 1934	19

1935:

Time for sanding and polishing:

Hudson hoods	18
Terraplane hoods	16

Repairs must be done along with production.

C. MCBRIDE.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 19th day of February, A. D. 1935.
[SEAL] MELVIN A. OWEN,
Notary Public in and for Wayne County.

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 19, 1935.

To whom it may concern:

In the trim department (no. 880), the installation of the all-metal top has put out of work 16 men and 8 girls.

In 1934 we had two relief men in the department and in 1935 we have none.

EDWARD HEDDON.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 19th day of February, A. D. 1935.
[SEAL] MELVIN A. OWEN, *Notary Public.*

My commission expired January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 18, 1935.

To whom it may concern:

We have approximately 110 men in department no. 2900 (export shipping). About 11 of those men are on supervision. Some of those men are working such long hours—I would say 11 or 12 hours per day. In one particular case a man usually starts his men at 10 a. m. or noon; he always starts at 8 a. m., our regular starting time.

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I can see where those men are using up so much of the money that is allocated for our work that the average man is cut short on his hours usually every day.

EMERY C. WILSON.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 18th day of February, A. D. 1935.

[SEAL] MELVIN A. OWEN, *Notary Public.*

My commission expired January 22, 1938.

HUDSON LOCAL UNION NO. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 18, 1935.

To whom it may concern:

The following figures show average hours, weeks, etc., worked by electric cutters with Hudson Motor Car Co., in 1934 in department no. 830.

Total hours worked	1,719¾
Total weeks	34½
Total earnings	$1,383.43
Average hourly earnings	.80

J. T. COTE.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 18th day of February, A. D. 1935.

[SEAL] MELVIN A. OWEN,
Notary Public in and for Wayne County.

My commission expires January 22, 1938.

HUDSON LOCAL UNION NO. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 18, 1935.

To whom it may concern:

The following shows production increases in the 1935 production schedule of cylinder blocks, including all operations in department no. 435, Hudson Motor Car. Co.

	Per hour
Nov. 8, 1934 (40 men)	12
Dec. 1, 1934 (78 men)	26
Dec. 15, 1934 (110 men)	40
Dec. 26, 1934 (115 men)	42
Jan. 9, 1935 (115 men)	43½
Feb. 11, 1935 (126 men)	48

JULIUS ZEITZ.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 18th day of February, A. D. 1935.

[SEAL] MELVIN A. OWEN,
Notary Public in and for Wayne County.

My commission expires January 22, 1938.

HUDSON LOCAL UNION, NO. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 20, 1935.

To whom it may concern:

Following is a table of production and wages of machining of the Hudson and Terraplane drive shaft (axle shaft) department 2400 axle plant Hudson

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Motor Car Co., 1927, 1928, 1929, compared to 1934. The equipment is generally the same with the exception of operation 10. Six Barber-Coleman machines and three men were replaced by one Cleveland Hobber and one man.

Recently the men have been informed that they must get every piece they can, regardless of time study.

Machining of Hudson and Terraplane drive (axle) shaft

Operation no.	Time, 1927, 1928, 1929	Time, 1934	Wages, 1929 per hour	Wages, 1934 and 1935
1. Man (3 milling machine 4 center drill).	100 per hour	128 per hour	84 to 88 cents	$0.72
5. Straighten	75 per hour	75 per hour	90 to 96 cents	.78
6. Lathe	50 per hour	do	88 to 96 cents	.76
7. Fay	75 per hour	95 per hour	do	.76
8. Ex. grind	100 per hour	125 per hour	90 to 96 cents	.78
9. Centerless ex	125 per hour	280 per hour	do	.80
10. Cut spline, 3 men	50 per hour do do	128 per hour 1 man, new machine.	88 to 92 per hour per man.	[1] .80
11. Drill press	75 per hour	110 per hour	84 to 88 cents	.72
12. Thread (heat treat)	140 per hour	180 per hour	do	.72
17. Straighten	75 per hour	75 per hour	92 to 96 cents	.80
18. Ex. grind	do	103 per hour	do	.80
19. Ex. grind	50 per hour	75 per hour	do	.80
20. Milling machine, 2 men	100 per hour do	109, 1 man 109	84 to 92 cents	.78
21. Drill	80 per hour	100 per hour	82 to 88 cents	.74

[1] 1 man.

[SEAL] TRACY M. DOLL.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn before me this 20th day of February 1935.

MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 18, 1935.

DEPARTMENT NO 750

Stanley McDill, who is a straw boss, said that anybody who votes for C. M. Fix is a ——. He also took an Associated Automobile Workers of America button off of one of the men and told some of the others to vote for Hudson Industrial Association.

Lester Fazenbaker and Joe Donelson, also straw bosses, continually interrupted me in my campaign for district representative in my district.

[SEAL] C. M. FIX.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 18th day of February, A. D. 1935.

MELVIN A. OWEN,
Notary Public in and for Wayne County.

My commission expires January 22, 1938.

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HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 19, 1935.

To whom it may concern:

The way the elections were conducted was not fair to all the laboring men, because the company-union representatives were allowed to leave their machines from 2 to 3 hours at least every other day to canvass for votes, instead of staying on their machines and getting their daily production.

The outside union representatives were strictly forbidden to leave their machines to do any campaigning whatever and were held to the lunch period at noon, and even then were stopped on several occasions by the plant-protection department men, which shows to a large extent that the Hudson Motor Car Co. did have a considerable part to play in this election, and by the ruling of the Automobile Labor Board they were to have no part whatever. I firmly believe that if an investigation were held in the Hudson plant regarding the election enough facts could be uncovered to show that the management's special representative had the backing of the entire management of the Hudson Motor Car Co.

[SEAL] JOHN KRULOCK.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 18th day of February, A. D. 1935.

MELVIN A. OWEN,
Notary Public in and for Wayne County.

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 18, 1935.

To whom it may concern:

I, George Moore, a member of the Associated Automobile Workers of America, was active in organizing the Hudson Local, No. 2, and holding the office of delegate to the national council, was transferred from the Gratiot Avenue plant of the Hudson Motor Car Co., to the main plant of the same company on Jefferson Avenue in order to curb my union activities in the Gratiot plant, and this occurred 2 weeks before the Government primary elections were to be held for representation of the workers. I was transferred back to the Gratiot Avenue plant the day before the final elections were held.

The plant protection department phoned the Detroit police, Conner Avenue station, and caused the police to stop the handing out of handbills in front of the plant. These handbills were the notice to our members to attend a meeting that we might explain the procedure of the elections. This condition happened twice at the Gratiot Avenue plant.

The plant protection department passed out handbills for the Hudson Industrial Association several times and absolute proof of this can be had from the labor member on the automobile labor board.

[SEAL] GEORGE A. MOORE.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 18th day of February, A. D. 1935.

MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 18, 1935.

To whom it may concern:

I, the undersigned worker in the Hudson Motor Co., in department no. 2445 at the axle plant, was told by my foreman, Tom Ruby, that I—Tom Ruby—

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could lay you off like nobody's business if you continued to wear the button "Further." You can't get another job if I were to lay you off because you are too old.

[SEAL] ISRAEL R. MARANTETH.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 18th day of February, A. D. 1935.

MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

HUDSON LOCAL UNION, NO. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 19, 1935.

To whom it may concern:

On Thursday February 14, 1935, O. Burns and J. Kehrig, company union representatives, were admitted to the axle plant and O. Burns gave a talk and urged the men to vote for the Hudson Industrial Association. These men were still at axle plant when the 12 o'clock whistle blew, showing that these men were campaigning on the company's time.

TRACY M. DOLL.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 19th day of February A. D. 1935.

[SEAL] MELVIN A. OWEN,
Notary Public.

My commission expires January 22, 1938.

HUDSON LOCAL UNION, NO. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 20, 1935.

To whom it may concern:

For several years I, C. J. Brace, have been employed as repairman for department 740, working in the repair department off the end of the final assembly line in department 750.

I have always been permitted or required to go to other departments, stock rooms, etc., for tools, replacement parts, etc., for use in my work as repairman.

Since becoming an Associated Automobile Workers of America candidate for representative, I, together with all other Associated Automobile Workers of America members employed in this particular repair department, have been restrained from leaving the department for any reason, even being prevented from going to our own department for tools, stock, or to get instructions from our foreman.

We are required to get all stock, tools, etc., through the subforeman or driver in the repair department, who are the only men in the department not members of the Associated Automobile Workers of America. The repairmen on the line, not members of the Associated Automobile Workers of America have not been so restrained.

C. J. BRACE.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 20th day of February 1935.

[SEAL] MELVIN A. OWEN,
Notary Public.

My commission expires January 22, 1938.

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HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 19, 1935.

To whom it may concern:

I started to work for the Hudson Motor Car Co. in December 1928, and was laid off in May 1930. From 1930 until the spring of 1932 was unable to be reemployed by the Hudson Motors owing to the low production. During 1932 I worked 1 month, and was not again rehired until 1934.

It is the claim of the employment office that on December 24, 1930, I was sent for. I didn't receive the communication which was sent me. During that particular time I was living at the Howard Institute on city welfare, but was in constant touch with the address at which letter was claimed to have been sent, namely, 1724 Hibbard. I particularly recall that on December 25, 1930, I was at that address for dinner with my mother.

I particularly recall that on January 16, 1931, I was told by the employment-office management that "I would be lucky if I got a job with the Hudson that year."

On February 5, 1935, I was released from employment and was told that if I could get proof showing that I didn't receive any word calling me back during 1930 that I would again be rehired. I submitted the proof, and was reemployed February 7, 1935, and was laid off again. My pay-off slip was marked " Services not needed." The foreman told me if I could get my record straightened out I could go back to work.

On February 1, 1935, I had in my possession, in my pocket, handbills relative to the election being conducted in the plant by the Hudson Motors, that had been printed and were being circulated by the union with which I am affiliated. While at work one of the plant-protection watchmen, badge no. 120, came along and took them out of my pocket, without my permission. This was followed by being definitely laid off on Tuesday, February 5.

It is my belief that my active participation in the campaign for these elections was the ultimate reason for my being laid off.

LESTER P. REED

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 20th day of February A. D. 1935.

[SEAL] MELVIN A. OWEN,
Notary Public

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 20, 1935.

To whom it may concern:

For several years I, R. Meldrum, have been employed as repairman for department 730, working in the repair department off the end of the final assembly line in department 750.

I have always been permitted or required to go to other departments, stock rooms, etc., for tools, replacement parts, etc., for use in my work as repairman.

Since becoming an Associated Automobile Workers of America candidate for representative, I, together with all other Associated Automobile Workers of America members employed in this particular repair department, have been restrained from leaving the department for any reason, even being prevented from going to our own department for tools, stock, or to get instructions from our foreman.

We are required to get all stock, tools, etc., through the subforeman or driver in the repair department, who are the only men in the department not members of the Associated Automobile Workers of America. The repairmen on the line not members of the Associated Automobile Workers of America have not been so restrained.

R. MELDRUM

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 20th day of February 1935.

[SEAL] MELVIN A. OWEN.
Notary Public

My commission expires January 22, 1938.

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HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 20, 1935.

To whom it may concern:

During the week previous to the nomination election at the body plant, our men were stopped distributing literature at the gates, both by the watchmen and the city police. The police stopped them on complaint of the watchmen at the plant. On one occasion they were stopped in the morning and the same noon the Hudson Industrial Association were allowed to distribute their literature inside and outside the gates freely and at will, but were not stopped either by the watchmen or the police.

CHARLES A. HEYS.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 20th day of February 1935.

[SEAL] MELVIN A. OWEN,
Notary Public.

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 20, 1935.

To whom it may concern:

I believe on account of my activity asking other employees if they wished to belong to our organization or not, I was transferred to the main plant. I also believe it was for the purpose of defeating me as a candidate I was retained until the day before the final election.

CHARLES A. HEYS.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 20th day of February 1935.

[SEAL] MELVIN A. OWEN,
Notary Public.

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 20, 1935.

To whom it may concern:

Upon making complaint of favoritism shown the H. I. A. in the nomination, it was understood by the Labor Board we were to receive the same privileges as the H. I. A. The day before the final election some of our men went into another department to hand out bills to other men, which same was being done in other departments by H. I. A. men. On this occasion there were 5 or 6 members of the Government election board present with us to watch the distribution of these bills.

In the afternoon my superintendent, Manson, came to me and said I had better tell the A. A. W. of A. men to keep in their own department; if they didn't they would be fired, although the H. I. A. men were going from department to department making speeches and handing out literature.

CHARLES A. HEYS.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 20th day of February, 1935.

[SEAL] MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

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HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 20, 1935.

To whom it may concern:

Clock cards of Joe Brooks, department 465, and Lamar Sissons, department 460, were O. K.'d for Monday, February 18, 1935, 100 a. m. to 3:15 p. m. with note "H. I. A."

F. W. SHILLING.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 20th day of February.

[SEAL] MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 20, 1935.

To whom it may concern:

Clock cards of L. Sissons, department 460, and Joe Brooks, department 465, were rang Monday, February 18, 1935, from 10 a. m. until 3:15 p. m. and O. K.'d "H. I. A."

A. MCNEILL.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 20th day of February.

[SEAL] MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 19, 1935.

DISCRIMINATION

I was elected as a company-union representative in the fall of 1933 to represent a certain group of men in collective bargaining with the management of the Hudson Motor Car Co. I was also a member of the Hudson local of the American Federation of Labor at the same time. After about 6 months as a company-union representative, I was firmly convinced that nothing could be accomplished for the workingmen through that organization, and I therefore resigned my position as representative. I immediately became a steward in my own department from Hudson Local, No. 18312, representing the men as an affiliate of the American Federation of Labor, and then the fireworks started.

The first thing the foreman tried to do was to force me to speed up production by asking me to give him more production than the time study called for, and I told him that I was doing all that I could do the way the job was speeded up. He then told me that he was going to put me in another department, and I said that I did not want to work in any other department and could not see any justice in the way he was speaking to me. He told me that if I didn't want to go to the other department I could quit my job; so, after considerable thinking on my part, I knew that this was being done on account of my union activities, and I went over to the other department and worked, but the next day I did not go back to the department, and he told me again that I could either go back or quit my job, and I then decided to have a showdown and find out just where I stood.

Both the foreman and myself went to the superintendent's office, and while there the foreman told the superintendent that I was holding up production, and I told them that that was not true and I could prove it, but they would not listen, so they asked me to compromise with them by going over to the other department for 3 days, and this I did, after which time I was sent back to my own department but was continually threatened until 3 weeks later, when they

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laid me off. I then took my case up with the employment office and told them that I was not laid off according to my seniority. The employment office kept me coming back there every morning for about 18 days, and then told me to look for work elsewhere, as they could do nothing about it. I then asked them for welfare help, as I knew that they were giving it out to other employees, and they told me that they could not do anything for me. I had my last pay of $14 on which to live and keep my wife and six children, and after having been told by the employment office to look for work somewhere else, I could not find other work because of the slow condition in the industry, and also that all my seniority was at the Hudson plant. I further feel that I have been discriminated againt because my case was presented before the Automobile Labor Board and there proven that I had more seniority in my department than five other men who were still working at that time. Not being able to get any other work, I had to get relief from the city welfare commission for a period of 6½ months, or until such time as I was recalled by the Hudson Motors, and even then my foreman did not want me back in my old department, and the only reason that I was put back there was on the responsibility of the employment man, Mr. Ed. Tholl.

After being rehired in my old department, my foreman told me that he would fire me the first time that he caught me talking to any of the other men about the union, and he said that it was either his job or mine. Things have been going along fairly well lately, but now that I have been elected as a district representative of the Associated Automobile Workers of America in the elections held by the Federal Government to represent the men in district no. 2 at the Hudson plant, I feel that discrimination and coercion are going to be stressed to a greater degree by this same foreman.

JOHN KRULOCK.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 19th day of February, A. D. 1935.

[SEAL] MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 18, 1935.

DISCRIMINATION

On Wednesday, February 13, 1935, the job setter, Mr. Booth, was overseeing an operation on a milling machine. After the operation was completed it was found that it was not as expected. It was reported to the foreman, Powel Elrod, who, without using good judgment, sent the regular operator home till Friday morning and left the job setter, who was overseeing the operation, stay on the job. This is a common practice in the Hudson Motor Car Co., and it is the opinion of the men that the job setter should have been sent home as well as the operator. Before the operator went home the job setter told him to "take it like a man."

Another irregularity is the fact that some men are hired in for certain operations at a stated hourly wage and after they are put to work they are switched over to another operation that calls for more money but they are never given the raise in pay that they are entitled to, then again, the boss allows his friends to work on the lower-priced jobs and still receive the pay for the higher-paid jobs. These conditions are as prevalent today as they have been in the past.

MERIT SYSTEM

The merit system as used today is nothing more than an "extortion system", it is used to dispose of the men who are opposed to the unjust methods used by the bosses and the management, as well as the men who belong to the outside unions. At present, a man who has worked for the company for 10 years could be replaced by a man who has worked for the company 1 year because he is a friend of the boss and also a "yes man" for the company. Many men

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have received long jail sentences for extortion, but under the Automobile Code at the present time, extortion (merit system) has been made legal and allows every boss to practice the same.

P. J. DENESHA.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 18th day of February, A. D. 1935.

[SEAL] MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 18, 1935.

Report of alleged discrimination by the Hudson Motor Car Co. against George G. King.

I have been laid off twice since June 1934, although I have 8 years and 3 months' seniority in department no. 210. At the present time there are several men working in this department having much less seniority.

I have been rehired twice since June 1934 but each time I have been placed in other departments at a much lower rate of pay.

Being an active member in the Associated Automobile Workers of America, I firmly believe that this action on the part of the Hudson Motor Car Co. is a deliberate attempt to force me to resign from active work in the union before I will be reemployed in my old department.

GEORGE G. KING.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 18th day of February, A. D. 1935.

[SEAL] MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 20, 1935.

To whom it may concern:

I hired out at Hudson's August 2, 1926, and worked until August 14, 1930. Came back September 5, 1933, and worked until May 1934, and was firing all except about 9 months, and hired back December 1, 1934, as ash man and oiler with a cut at 12 cents on the hour, and there are five firemen firing now with less seniority and more money.

I would like to know why I am not firing at my old rate, 72 cents an hour.

DENNIS J. MCDANIEL.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 20th day of February 1935.

[SEAL] MELVIN A. OWEN, *Notary Public.*

My commission expires January 22, 1938.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
Detroit, Mich., February 21, 1935.

To whom it may concern:

I, the undersigned, wish to set forth certain facts concerning the elections held at the Hudson Motor Car Co. on February 1 and 15.

During the period between February 1 and February 15, supervisors, foremen of various degrees, did participate actively in the campaigning for the nomination and election of certain candidates which were to be acceptable to the

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management, special representative of the Hudson Motor Car Co. to the Hudson Industrial Association, particularly in the division of the master mechanic; and master mechanic himself, Mr. M. Zewolnski, did call to his office various group leaders in his division for conference relative to the elections being conducted by the United States Government in the plants.

It has been brought to my attention by men who are members of this association (Associated Automobile Workers of America), who through fear of further jeopardizing their jobs with the Hudson Motors, do not wish to have their names revealed at this time, made statements to myself concerning said conferences with Mr. Zewolnski.

Among numerous things mentioned by him to them was that if an outside representative should be elected it would force the management to have various and sundry jobs which are normally done in that division to be let outside of the plant to small contracting shops. However, if an inside man was nominated this would not be.

Active participation in the election by supervisors in various other districts telling workers their choice in the elections should be the choice of a representative which had been certified by the management.

That between the primary and the final election there was held on company property meetings of these various candidates of the Hudson Industrial Association, whose time was being paid for at these meetings by the management to generate a feeling of hostility against all candidates from the outside free independent union.

That in the distribution of certain literature, of which copies are hereto attached, was printed at the expense of the Hudson Motor Car Co. and was passed out by employees of the Hudson Motor Car Co. being paid for at that time in so distributing said literature, that is defammatory in character to certain individuals and the outside organization; also here attached are copies of literature which was distributed by Associated Automobile Workers of America at various times prior to the election which caused the management through their plant-production department to contact city police officials to see that such literature was not distributed near the gates of the Hudson Motor Car Co.

That the city police did under threat of arrest forbid the handing out of this literature, which after observing said literature is not in any way derogatory to the management but printed and published for the reason of fostering and fomenting strikes, strife, and discord among the workers in the Hudson Motor Car Co.

That during the working hours preceding the primary election, members of the plant production department were actively engaged in seeing that none carried on his person any of this literature or other literature pertaining to this association. In one particular department a member of the plant-production department, badge no. 120, did forcefully take from the person of one of the members of our organization literature pertaining to the election, a copy of which is hereto attached. That some 1 or 2 days following, the man was released from employment. After taking aforesaid complaint up with the management, the man was reinstated and put back to work after losing 1 day's time, but was immediately laid off after having worked approximately 7 hours. This man is married and has two children as dependents.

We cite this particular case as one of many discriminatory methods that are being employed by the Hudson Motor Car Co. against members actively engaged in our organization.

ARTHUR E. GREER.

STATE OF MICHIGAN,
County of Wayne, ss:

Subsribed and sworn to before me this 21st day of February 1935.

[SEAL] MELVIN A. OWENS, *Notary Public.*

My commission expires January 22, 1938.

Mr. LESINSKI. When the election was ordered in the Hudson plant these are the pamphlets distributed by the company and the prepared bylaws.

(The pamphlets and prepared bylaws distributed by the company are as follows:)

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Report of activities of the Hudson Industrial Association, April 1934 to January 31, 1935

Net proceeds from all activities		$4,706.14
Proceeds from vending machines:		
Automatic Canteen Co	$1,282.25	
F. & W. Products Co	531.98	
		1,814.23
		6,520.37
Welfare refunds		11.00
		6,531.37
Expenditures:		
Welfare cases	$2,876.50	
General expenses	856.42	
Equipment	1,762.96	
Prepaid expenses	248.89	
		5,744.77
		786.60

J. KEHRIG, *Financial Secretary.*

Notice all voters:

Suppose the Associated Automobile Workers succeed in electing 100 percent of the representatives. What is the first thing they pledge to do for you?

Demand a 30-hour week and $1,800 a year minimum pay.

This will mean more than 50 percent advance in your hourly rate.

Can the company pay it? You know they cannot, and meet competition.

When the company refuses, as they will have to, what is left for the representatives to do? Either report to the Government or call a strike.

Press reports from Washington yesterday state that the administration says "No professional organization shall be allowed to dominate the labor situation or dictate the policies of the administration."

There goes the closed-shop dream, as well as Government backing.

So all that is left to fight with, is—call a strike. Do you want it?

C. CLARK.

PROMISES VERSUS RESULTS TO ALL HUDSON EMPLOYEES

Other organizations offer you mere promises. The H. I. A. offers you results.

Other groups wish to forget these idle promises, quickly made, and quickly forgotten, once you have paid your money. The H. I. A. proudly wishes to direct your attention to its record, based on real accomplishments.

If empty promises appeal to your good nature, then let us promise you the world and everything in it.

The H. I. A. is the truest and best collective-bargaining agency in the business. Its representatives have served in your interests, and deserve to be retained.

The representatives of the H. I. A. sincerely believe that you are clear-minded enough to distinguish the difference between promises and results.

You have read our list of accomplishments, ask yourself; what has any other organization done for you?

Think for yourself—and don't be disillusioned by the other fellow's promises.

H. I. A.—HUDSON INDUSTRIAL ASSOCIATION.

ALL THAT GLITTERS IS NOT GOLD

What has been your experience in the past with labor organizations created by professionals whose livelihood depends upon your pay check and their success in extracting a portion of it for no value received?

Your membership and money is secured by extravagant promises, but can you recall any single instance of any such promises being fulfilled by the labor organizations making them?

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What possible value can there be to you in joining an organization that may cease to exist in a short time along with the money that you have paid in? Then what is to happen to your money should the organization decide to move to greener pastures where the dues are more plentiful?

Where did $3,500 or more of Hudson Local No. 18312 of the A. F. of L. disappear to when the charter was returned to the A. F. of L. headquarters?

What benefits have been derived from dues paid into Hudson Local No. 2 of A. A. W. A.? Has it ever furnished you with a record of accomplishments in justification of its existence and as a proof that it has been of benefit to anyone but its organizers?

Should any A. A. W. A. candidate be successful in his district, is he going to represent everyone in the district or is he going to collective bargain for only those who have contributed to the treasury of A. A. W. A.? What is to become of the men in the district who have found a better use for their hard-earned money than spending it for windy promises that never come true?

In justice to yourself and your family, thoughtfully consider the above questions before you vote.

The H. I. A. on the other hand is an organization that is permanent and responsible. Its books are open to your inspection at all times; its accomplishments are a matter of record. If you wish to be represented by a man in your district who is honest, sincere, responsible, and of the type to command respect, vote for the H. I. A. candidate.

Sample nomination ballot for district representative

District No. ------

I nominate for representative of my district:

(Name)

H. I. A.
(Labor group affiliation)

Vote H. I. A.

HUDSON INDUSTRIAL ASSOCIATION

SOMETHING FOR YOU AND YOUR FAMILY TO THINK ABOUT!

HUDSON INDUSTRIAL ASSOCIATION MEMBERS

As you know, the automobile labor board as set up under the President's agreement is conducting a primary election on Friday, February 1, and a final election February 15, in the Hudson Motor Co. plants to determine proportionate representation and to elect 50 or more representatives to form a collective-bargaining agency.

The present representatives of the H. I. A. take this means of informing their members of some of the facts pertaining to this election and the status of the H. I. A. after the election.

Contrary to reports that the H. I. A. will cease to exist after the forthcoming elections, we assure you that we can and we will carry on all our activities as in the past.

It is not commonly known, yet it is a fact, that in wage disputes between the men and the management the automobile labor board may act only as a board of arbitration, and this only where both parties so agree.

FACTS

Perhaps you too have heard glowing promises made by other organizations of what they will do for you if you elect a man of their choice as a representative on this bargaining agency that is to be set up.

Your present H. I. A. representatives have met and discussed this present situation in great detail. Most of these representatives in the years gone by have belonged to and have taken an active part in different labor organizations, and they have come to the definite conclusion that they have worked for and paid their hard-earned money into these organizations for unfilled promises.

Now they will agree with you that the H. I. A. is not perfect, that you have asked for things that they have been unable to obtain, but they at least have been honest and sincere in their efforts.

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Let us touch on a few of the things the H. I. A. has really secured for all the employees of the Hudson Motor Car Co.

1. Hudson employees are the only ones employed by a major company in the industry receiving their pay every week. Smoking zones have been provided inside the plants for your use the year around. 3. Hudson employees enjoy accident and life insurance at a very low cost which has proven a godsend to a large number of families of your fellow workers. 4. A welfare fund was established by the H. I. A. and upwards of $3,000 was distributed among the needy families of your fellow workers. This fund was derived from the proceeds of dances, and the sale of gum, cigarettes, candy, and peanuts through vending machines installed in the plants.

Space does not permit going any further with a list of things your association has done, but in fairness to yourself, your family and your fellow worker, have a friendly talk immediately with your present representative. Ask him what he has done and what other representatives have done, and you will be surprised at the number of individual grievances he has satisfactorily adjusted. He does not divulge these for fear of being charged with boasting.

You have heard the charge that the H. I. A. is company dominated. That is not true. The H. I. A. has confidence in the management and hopes and feels that the management has confidence in it.

The only basis for the charge of domination is when the H. I. A. is not granted a request. The organizers for other labor groups immediately use this as a claim of company domination. But when these other labor groups have a request to make and it is denied, do they tell you it is because they are company dominated? No; that is a different story!

Another charge they make is that a representative in the H. I. A. does not have an opportunity to meet his men in an assembly. We understand that the automobile labor board will provide an opportunity for such meetings regardless of affiliation.

IMPORTANT

Your present H. I. A. representative earnestly solicits your support and your vote in the primary election Friday, February 1. If elected, he will know that you appreciate what he has done for you in the past. It is your support that he needs at all times to lighten the burden of your job and his also.

Don't forget your representative in the H. I. A. is not interested in membership dues. He is a fellow worker with a family like your own. Your troubles are his troubles. In solving your problems he solves his own, and this he considers his just compensation.

Let your present H. I. A. representative continue to serve you from a sincere, honest, impartial, and common-sense standpoint, without strife and loss of work.

When you go to the polls on Friday, February 1, show him you do support him by writing his name on the ballot and after it where it says "Labor group affiliation" write H. I. A.

All the benefits; none of the detriments.

H. I. A.—HUDSON INDUSTRIAL ASSOCIATION.

Sample nomination ballot for district representative

District No. ------

I nominate for representative of my district:

---------- H. I. A.

(Name) (Labor group affiliation)

ARTICLES OF ASSOCIATION OF THE HUDSON INDUSTRIAL ASSOCIATION. NOVEMBER 1934

SECTION I. REPRESENTATION

ARTICLE 1. Representation shall be by logical geographical units as determined by the rules committee, hereinafter called "voting districts."

ART. 2. Where logical geographical units are impossible, such adjustments as may be necessary to give a complete and fair representation shall be made by the committee on rules prior to election.

ART. 3. Each voting district shall be represented by one representative.

ART. 4. Voting districts will be determined on the basis of 200 employees or major fraction thereof, based on the average pay roll for the preceding 12 months prior to the 1st day of July of each year.

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SECTION II. TERM OF REPRESENTATIVES

ARTICLE 1. Representatives shall be elected and shall serve for a term of 1 year, and shall be eligible for reelection.

ART. 2. Representatives may be recalled from office upon the approval by the committee on rules of a petition signed by two-thirds of the voters of his respective district.

ART. 3. A representative should be deemed to have vacated office upon termination of his employment with the company; permanent transfer from one voting district to another or upon his appointment to such regular position as would bring him within the meaning of article 3 of section 4, entitled "Qualifications of representatives and voters."

ART. 4. Vacancies in the office of representatives may be filled in the discretion of the committee on rules, if there are no alternates available, by special election conducted in the same manner as the general election.

SECTION III. QUALIFICATIONS OF REPRESENTATIVES AND MEMBERS

ARTICLE 1. Any member of the Hudson Industrial Association who is on the company's pay roll on the day of nomination or election shall be eligible to vote and qualified to be nominated and elected to the office of representative.

ART. 2. Salaried employees shall not be entitled to vote, be eligible for membership, or to hold the office of representative.

ART. 3. Company officials, superintendents, foremen, assistant foremen, and all persons who are vested with supervisory authority, having the right to hire or discharge, shall not be entitled to membership, or be eligible as a representative.

ART. 4. This plan in no way shall discriminate against any employee because of race, sex, or creed, or abridge or conflict with his or her right to belong or not to belong to any lawful society, fraternity, union, or other organization.

SECTION IV. NOMINATIONS AND ELECTIONS

ARTICLE 1. After the first year's nominations and elections, these shall be annually, in the month of August, and on a day and date to be set by the committee on rules.

ART. 2. The total number of representatives shall be chosen at each annual election, provided, however, that in the event of a lesser number being elected that the incumbent of the office shall continue and hold over as the representative of that district until the next annual election.

ART. 3. Nominations and elections shall be conducted by the members themselves in accordance with these rules and regulations.

ART. 4. All nominations and elections shall be by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to prevent any fraud in the casting or counting of ballots. The responsibility for the maintenance of the purity of the nomination and election is a prime duty of the rules committee.

ART. 5. On the day of nominations, each duly qualified voter shall be furnished, by the committee on rules, with a ballot stating the number of members for whom he is entitled to vote, on which he shall write the names or clock numbers of the members in his district whom he desires to nominate as his representatives.

ART. 6. The voter may place in nomination twice the number of representatives to which his district is entitled.

ART. 7. If on any ballot the same name is placed in nomination more than once it shall be counted but once.

ART. 8. Should the number of members nominated on any ballot exceed the permitted number as stated on the ballot, the ballot shall be void.

ART. 9. There shall be three (3) members nominated for every member to be elected.

ART. 10. Those who have received the largest number of votes up to three times the number of representatives to be elected, shall be declared nominated and shall be candidate for election.

ART. 11. On the day of elections each duly qualified voter shall be furnished by the committee on rules with a ballot on which the names of the candidates shall be printed in the order of the number of votes received at the nominations.

The voter shall indicate his preference by placing an (X) opposite the name of the candidates of his choice.

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ART. 12. Candidates to the number of representatives to which the district is entitled may be voted for and this number shall be stated on the ballot. If this number is exceeded the ballot shall be void.

ART. 13. Each member shall deposit his own ballot in a box provided for that purpose by the committee on rules, and the ballots should be counted under the direction and supervision of said committee. The candidates receiving the largest number of votes shall be declared elected.

ART. 14. Candidates failing of election shall stand as alternates in the order of the number of votes received and become representatives as need may arise through vacancies.

ART. 15. In the event of a tie, seniority in the company's continuous employment shall determine the choice.

ART. 16. Controversies arising concerning any nomination or election, shall be referred to and decided by the committee on rules.

ART. 17. The committee on rules may make such provision as they may consider necessary for assisting any member, who may so request, in properly marking his ballot.

ART. 18. That only votes for names printed on the ballot at election will be considered valid. No sticker candidates will be allowed.

SECTION V. MANAGEMENT'S REPRESENTATIVE

ARTICLE 1. It is understood that the company will appoint a management's special representative who will represent the management in negotiations requested by employees' representatives or officers on any committee of the association. He shall be present at meetings of the association, representatives, or officers on any committee only when requested by the body desiring his presence.

ART. 2. The management of the company and the direction of the working forces, including the right to hire, suspend, or discharge for a proper cause or transfer, and the right to relieve employees from duty because of the lack of work or other legitimate reasons, is vested exclusively in the management, except as expressly provided herein, and these rights shall not be abridged by anything herein contained.

SECTION VI. COMMITTEES

ARTICLE 1. After each annual election, the representatives shall immediately meet for the purpose of electing a chairman, recording secretary, financial secretary, treasurer, and three trustees, a general committee, and a committee on rules, and for selecting members of such other committees as are found necessary by the committee on rules for the consideration of the following subjects:

(*a*) Rules.
(*b*) Revenue raising.
(*c*) Wages.
(*d*) Hours of employment and working conditions.
(*e*) Practices and methods, and efficiency of factory.
(*f*) Safety and accident prevention.
(*g*) Recreation and entertainment.
(*h*) Continuity of employment.
(*i*) Health and sanitation.
(*j*) Welfare and emergency relief.

ART. 2. These activities are to be referred to one of seven committees:

Committee 1: Rules and elections.

Committee 2: Wages, hours of employment, working conditions, and continuity of employment.

Committee 3: Safety and accident prevention, health and sanitation.

Committee 4: Recreation, efficiency of factory, and practices and methods.

Committee 5: General appeals and insurance.

Committee 6: Emergency relief.

Committee 7: Entertainment and revenue raising.

ART. 3. The general committee considers all matters not falling within the scope of any other committee herein provided for.

The chairman and secretary of the representatives shall be members of the general committee. This committee shall also act as the committee on appeals.

ART. 4. Each committee shall be composed of six members and shall appoint its own chairman and secretary with the exception of committee no. 7, entertainment and revenue-raising committee, which shall be composed of 10 members.

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ART. 5. Vacancies on committees shall be filled at the regular meetings of representatives.

ART. 6. Wherever the word "committee" is used throughout this plan it shall mean the standing committee of the representatives only.

ART. 7. That the presence of four members on any standing committee be considered a quorum.

ART. 8. That in the event of the chairman's or secretary's absence the popular vote of the committeemen present be used to select a temporary chairman or secretary.

ART. 9. That any officer or committeeman whose duties involve the handling or accounting of the finances of the association be bonded.

ART. 10. That the chairman of the full assembly be entitled to a vote only in the event of a tie, while the chairman of any of the committees shall be entitled to a vote at all times.

ART. 11. The treasury shall be custodian of the funds of the association on whom all drafts must be drawn signed by the treasurer and countersigned by the chairman of the full assembly. He shall deposit all money in a bank designated by the trustees in the name of the association.

He shall make a report at the monthly meeting of all monies collected, disbursed, and on hand, and in the bank. He shall draw no money from the bank without the signature of the chairman of the full assembly. He shall furnish a bond in a reliable company in a sum equal to the amount of money in the bank and cash on hand, before entering upon the duties of his office, said bond to be adjusted annually. The expense of said bond to be borne by the association.

ART. 12. The trustees shall have the custody and control of all of the properties of this association and be solely responsible for same to the full body of representatives. It will be their duty to see that the bonds of the treasurer and financial secretary are properly furnished and ready to be presented to the association at the annual meeting held in September of each year and to hold said bonds for the association.

It will be their duty to approve all bills presented to the association at each meeting. They shall audit the books of the secretary and treasurer in February and August of each year or oftener as required and deliver a written certificate to the full assembly of their findings derived from such audit and to veritfy the statement of the treasurer which shall be presented in February and August of each year.

ART. 13. The financial secretary shall keep a true and accurate account of all moneys received, deposited, on hand, and expended. He shall maintain a set of books adequate for the purpose of the recording of each and every financial transaction of said association. He shall prepare and submit a statement in the month of February and August of each year to the full assembly showing the exact financial status of said association which shall be approved by the trustees before being submitted.

The office of financial secretary shall be bonded for the same sum and in a like bond as the treasurer. He shall turn over to the treasurer weekly, all moneys received by him and take the treasurer's receipt therefor which must be kept in a file in consecutive order. He shall draw all warrants upon the treasury for the payment of all expenses incurred and authorized. He shall keep all books and accounts in such condition as shall be readily audited at such periods as the association may determine.

ART. 14. The duties of the recording secretary shall be to maintain a roster of all members and shall keep a true and accurate account of the proceedings at all full assembly meetings. He shall conduct all correspondence and send out notices promptly. He shall not be bonded and shall in no way be held responsible for the finances of said association.

SECTION VII. MONTHLY MEETINGS

ARTICLE 1. Representatives shall meet immediately after election for organization purposes and shall hold monthly meetings thereafter on days and dates to be set by the committee on rules.

ART. 2. Special meetings of representatives may be called as occasion may require on approval of the chairman of the representatives.

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SECTION VIII. COMMITTEE MEETINGS

ARTICLE 1. Committees shall meet as soon as possible after election for the purpose of electing a committee chairman and secretary and thereafter shall meet every month on a day and date to be set by the committee on rules.

ART. 2. Committees shall meet between the hours of 3 and 5 in the afternoon unless otherwise arranged for on the approval of the chairman of the representatives.

ART. 3. Special meetings of the committee may be held as occasion may require on the approval of the chairman of the representatives.

ART. 4. For the time necessarily lost in actual attendance at regular meetings or special meetings of conferences approved by the chairman of the full assembly, representatives shall receive from the company payment at their day rate.

ART. 5. The various committees have the power to call before their body the superintendent that is most vitally interested in the problem at hand to render a definite decision. The superintendent whose presence is requested by the committee shall be forwarded by mail, a reasonable time before scheduled appearance, the problem confronting said committee and any other information that shall assist the superintendent in preparing himself for the issue.

ART. 6. Representatives shall have the right to appear before and be heard by a committee considering matters of concern to the employees of the district or unit they represent.

ART. 7. In the standing committee, upon the request of any one member, a "yes" or "no" vote shall be recorded.

SECTION IX. ANNUAL CONFERENCE

ARTICLE 1. An annual conference between all of the representatives and members of the management as may be invited shall be held at a time and place determined by the committee on rules, who shall be in charge of the procedure at such conference.

SECTION X. PROCEDURE FOR ADJUSTMENTS

ARTICLE 1. Any matter which in the opinion of any member requires adjustment, and which such member has been unable to adjust with the foreman of his department, may be taken up by such member, either in person or through any representative of his district in writing:

First: With the superintendent of his division.

Second: With the management's special representative.

Third: With the proper committee.

Fourth: With the committee on appeals.

Fifth: With the member of the board of directors of the Hudson Motor Car Co. who is responsible for the division in which the aggrieved employee is employed.

Sixth: If the member of the board of directors fails to effect a satisfactory settlement within a reasonable time, the aggrieved employee or his representative may file a written request that the matter be referred to a board of arbitrators composed of three members, one arbitrator to be appointed by the employee or his representative, one by the management, and a third to be selected by the two already chosen arbitrators. The decision of the arbitrators shall be final and binding on all parties.

ART. 2. Each step of the series of appeals shall be considered with reasonable promptness but each appeal must be accompanied by a request or notice of appeal in writing and addressed to the proper party or committee, specifying in detail the matter requiring adjustment and the reason which warrants its consideration.

SECTION XI. GUARANTEEING THE INDEPENDENCE OF REPRESENTATIVES

ARTICLE 1. It is understood and agreed that each representative shall be free to discharge his duties in an independent manner without fear that his individual relations with the company may be affected in the least degree by any action taken by him in good faith and in his representative capacity.

ART. 2. To insure to each representative his right to such independent action he shall have the right to take the question of an alleged personal discrimina-

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tion against him, on account of his acts in his representative capacity, to any of the superior officers, to the general committee, and to the president of the company.

Having exercised his right in consecutive order as indicated but failing a satisfactory remedy within 30 days, a representative shall have the further right to appeal to a board of arbitrators composed of three members to be chosen in the same manner as provided in the preceding section (sec. 10 step 6).

SECTION XII. AMENDMENTS

ARTICLE 1. Any method of procedure hereinunder may be amended at any time by two-thirds vote of the entire membership of the committee on rules, or by concurrent majority vote of the representatives.

SECTION XIII. COST OF OPERATION

The entire expense of the representative plan shall be borne by the company.

Mr. LESINSKI. These are pamphlets distributed by the Associated Automobile Workers of America of Hudson Local No. 2.

(The pamphlets above referred to are as follows:)

CAST YOUR VOTE FOR THIS CANDIDATE AND THE ASSOCIATED AUTOMOBILE WORKERS OF AMERICA

District_____

Vote for a free and independent outside union.

PROGRAM OF THE ASSOCIATED AUTOMOBILE WORKERS OF AMERICA

(1) Six-hour day, 5-day week.
(2) Guaranteed annual wage of $1,800.
(3) Adequate safety and sanitary measures.
(4) Abolish merit system.
(5) Overtime rate for overtime worked.

Work with the Associated—Vote with the Associated.

THINK THIS OVER!

THE TRUTH ABOUT COMPANY-CONTROLLED UNIONS

1. Is formed by the company to prevent organization in a real labor organization.
2. It is not a true agency for collective bargaining, since employee representatives under company-union plans are required to follow the instructions of the management.
3. Is not able to bargain in the true sense of section 7-a because when the company bargains with the company union it does not bargain with the workers, but with itself.
4. Is favored by employers because they know there is nothing to fear from such unions.
5. They can be destroyed by the employer at any time, since he runs it.
6. Is paid for by the employer and controlled by the employer.
7. Does not secure higher wages or better working conditions.
8. Members are not permitted to hold mass meetings.
9. They have never offered any constructive criticism or changes in the automobile code before any commission.
10. They have never presented any cases of discrimination before any labor board.

These and many other vital issues confront you now. Make your comparison.

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Hudson Local Union No. 2, Associated Automobile Workers of America, offer to you the opposite of the above 10 points. Join now. Membership 50 cents per month while working. No initiation fee. Meets every Friday night in Amity Temple.

ARE YOU PREPARED TO ENGAGE IN COLLECTIVE BARGAINING AS DEFINED BY SECTION 7-A

WHO IS YOUR REPRESENTATIVE

Why not for once in your life show to the world that the workers are able to speak for themselves, and join an organization that is determined that collective bargaining is an established fact.

This is an opportunity for you to show that your principles are of the highest caliber, and support an independent union, that has your economic welfare as its fundamental principle.

Make this organization your organization, and if you are the type of man your fellowman thinks you are, you will help to combat the existing evils that are prevalent in the automobile industry today.

The golden opportunity is here for the wage earners, select and join the largest independent labor union in the industry. Do not fail to grasp the opportunity that is yours. When workers solidly aline themselves in a cause for their betterment, then success is assured. Membership, 50 cents per month. No initiation fee. Ask your buddy to tell you, where and how can I join.

HUDSON LOCAL UNION, No. 2,
ASSOCIATED AUTOMOBILE WORKERS OF AMERICA,
12504 East Jefferson Avenue, corner Conner (opposite main plant).

MASS MEETING THURSDAY, JANUARY 31, 1935, AMITY TEMPLE, AT 7:30 P. M.

Rally for all workers of Hudsons to lay final plans for the election of February 1. Everybody welcome. A prominent speaker will address the meeting. Hudson Local Union, No. 2, Associated Automobile Workers of America.

DO YOU KNOW

That the United States Government will soon hold elections in all Hudson plants for representatives for collective bargaining? Ballots will be cast secretly. The Associated Automobile Workers Workers of America is an organization which has the welfare of all employees at heart at all times. Organized for the purpose of collective bargaining. Don't be caught napping. Be prepared to meet the challenge given to you. Choose the organization you feel will be the most capable of handling your affairs as guaranteed under section 7 (a) of the National Industrial Recovery Act. Talk over your problems with your fellow worker. You will find yours and his problems are identical. Work together. That is organization. Be a part of your organization. Have a voice and a vote in the affairs of a labor organization that conducts mass meetings for the purpose of deciding the policy and action. This local union offers to you the opportunity to participate in determining your destiny as an auto worker. The procedure of these Government elections at the Hudson plants will be explained at all of our meetings every Friday night at Amity Temple, Parkview and Kercheval Avenues. Ask your buddy to tell you "where and how can I join."

HUDSON LOCAL UNION NO. 2

ASSOCIATED AUTOMOBILE WORKERS OF AMERICA

12504 E. Jefferson Avenue, Corner Conner

(Opposite main plant)

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VOTE—YOUR CHOICE WITHOUT FEAR OR FAVOR—VOTE

SAMPLE NOMINATION BALLOT FOR DISTRICT REPRESENTATIVE OF HUDSON MOTOR CAR CO., DETROIT, MICH.

District No. ____.

I nominate for representative of my district:

_____ _____
(Name) A. A. W. of A.
(Labor group affiliation)

INSTRUCTIONS

Write the name of the person you want for representative of your district. Candidates are not restricted to employees.

Indicate, if you wish to do so, the labor group affiliation, if any, of your candidate. For purpose of proportional representation, employees who do not specify any labor group affiliation will be treated as a group.

The names of the two persons in your district who receive the largest number of votes will be printed on the final ballot.

In the final election the candidate receiving the largest number of votes will be the representative of your district. If the representatives receiving the largest number of votes for all districts do not provide proportional representation for all substantial labor groups in the plant, additional representatives will be added from among candidates receiving the next highest votes in the plant in any groups entitled to more representatives.

HUDSON LOCAL UNION NO. 2, ASSOCIATED AUTOMOBILE WORKERS OF AMERICA

THE ASSOCIATED AUTOMOBILE WORKERS OF AMERICA IS AN AMERICAN ORGANIZATION

FOUNDED FOR AND BY THE WORKERS IN THE AUTOMOBILE AND PARTS PLANTS—IT IS COOPERATIVE, PROGRESSIVE, NONPROFITABLE, DEMOCRATIC, PROTECTIVE, CHARITABLE

Its constitution was written by the workers themselves. It has no salaried organizers. It is the largest independent labor organization in the automobile industry participating under the President's Agreement of March 25, 1934.

Under modern industrial conditions it is absolutely essential that we remain an industrial union, striving to raise the living standards of all workers in the industry and not break into small groups or trades, each fighting for their own selfish interests.

Your assistance is vital if we are to have a voice strong enough to protect the interests of the workers in the coming years of trial and adjustment as we feel our way toward a new social order.

We need your efforts to help make a success of this program. We feel that by eliminating outside labor leaders and confining our membership to those within the industry we can build up an idea organization that will function for the best interests of the workers in a spirit of cooperation and coordination.

HUDSON LOCAL UNION, NO. 2, MEETS EVERY FRIDAY AT AMITY TEMPLE, PARKVIEW AND KERCHEVAL AVENUES, 7:30 P. M.

Don't be a nonunionist because they are not run right. Get into one and help keep it "in the straight and narrow path."

Don't forget that organization increases wages and shortens the work week, making work steadier.

Don't forget that the more bitterly the employer opposes labor unions, the more the employee should support them. There's a financial reason. Think it over.

Don't wait for others, others are waiting for you, someone must be first, why not you?

There can be no prosperity without justly high wages. Earnings of working people are the basis and index of progress in any community.

Now is the time to make your choice. Join with us in this fight for your benefit.

HUDSON LOCAL, NO. 2, ASSOCIATED AUTOMOBILE WORKERS OF AMERICA

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MY FATHER WAS A MAN

They claim I belong to their union
That is called the H. I. A.
But as long as I have my manhood
I want my children to say:
"My father was a man."

If you read the propaganda
That is passed out from day to day
By the plant protection department
And members of the H. I. A.
You will understand then, what I meant,
When I want my children to say:
"My father was a man."

I do belong to a union
And I am proud to relate
That it is a democratic organization
That is chartered by the State.
We have no special company representative
To guide us on our way,
And therefore are not hampered
Like the members of the H. I. A.

We represent the men to the management,
Not the management to the men,
And in an entirely different manner
Than the H. I. A. has been.
We all must earn a living
In the same legitimate way,
But how in God's name can we do it
Through the union known as "H. I. A."

Now that you have read these lines
And still wonder what to do,
Just ask yourself, will my children say:
"My father was a man." —*Exlax.*

Mr. LESINSKI. Now, another thing I want the record to show is that the company has mailed to the employees bylaws, applications for employment, membership cards—and in this connection section 7 (a) bars any company or employer from intimidating his workmen. The proof presented is that the companies or employers were interested in putting their own company union over. One employee received four letters from the company in which were enclosed a membership card, which is as follows:

HUDSON INDUSTRIAL ASSOCIATION

MEMBERSHIP CARD—1935

Mr. Percy Denesha is a member and entitled to all benefits which go with such membership.

Mr. LESINSKI. And here is an application card made out to no. 43560.

APPLICATION FOR MEMBERSHIP—HUDSON INDUSTRIAL ASSOCIATION

Clock No. 43560

To RECORDING SECRETARY, HUDSON INDUSTRIAL ASSOCIATION,
Detroit, Mich.

Wishing to avail myself of the benefits of the Hudson Industrial Association, I hereby apply for membership in said association.

(Date) (Name)

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RETURN TO REPRESENTATIVE OF YOUR DISTRICT OR DEPOSIT IN REPRESENTATIVE'S MAIL BOX

Mr. LESINSKI. This data was also presented to me by Mr. R. J. Schmidt, who represents the Mechanical Educational Society of America in Cleveland, Ohio, the headquarters of which is Detroit, Mich.

(The letter of Mr. Schmidt is as follows:)

MECHANICS EDUCATIONAL SOCIETY OF AMERICA,
Cleveland, Ohio, March 11, 1935.

Mr. JOHN LESINSKI,
Congressman, House of Representatives,
Washington, D. C.

DEAR SIR: Enclosed please find documents and affidavits regarding company unions. If more time were available, many more such statements could be procured.

May I request that these documents be returned to our office at 6007 Euclid Avenue, Cleveland, Ohio, when they are no longer needed?

Thanking you for your efforts in our behalf and assuring you of my wholehearted cooperation in this matter, I remain,

Respectfully yours,

R. J. SCHMIDT.

Mr. LESINSKI. Then I have Mr. Schmidt's statements.

(The statements of Mr. Schmidt are as follows:)

MECHANICS' EDUCATIONAL SOCIETY OF AMERICA,
Cleveland, Ohio, March 11, 1935.

Congressman JOHN LESINSKI,
House of Representatives,
Washington, D. C.

DEAR SIR: The application for employment attached to this letter is further proof that the applicant is forced to declare himself whether or not he is willing to deal and contract directly with the management in regards to wages and working conditions; and it, therefore, becomes a condition of employment. This form of application is being used in a large number of plants here in Cleveland. If an employee or applicant should choose to deal through outside representatives of his own choosing, he does not get the job but is told that "they will let him know if anything is available"; and he never hears from them again.

If the employees in a plant are suspected of attempting to organize in an outside organization of their own choosing the management immediately tries to "weed out" the "agitators" by criticizing their work, attempting to engage them in an argument, in order to have reasons for dismissing them. If this does not help, a company union is immediately established. The employees are approached one by one and asked to join. If they refuse, they are coerced and victimized into joining or are threatened into remaining aloof from any connection with labor organizations. That in itself is contrary to the law and because of that fact a large number of company unions are brought into being by such process which processes themselves are illegal; the company unions, therefore, are also illegal.

Employers use industrial spies, blacklists, lay-offs, and every thinkable subterfuge to prevent organization of employees. Some employers use bonus and group-insurance schemes, which they cancel at will, in order to prevent organization.

The statements herein contained are ample proof that company unions should be abolished.

Yours sincerely,

R. J. SCHMIDT.

Mr. LESINSKI. Here [indicating] is a letter distributed by the Bartt Stamping & Machine Works, and then I have the plan presented by the National Tool Co. of Cleveland, Ohio, to their employees.

(The letter and plan above referred to are as follows:)

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To the employees of the Barit Stamping and Machine Works:

In order to get a better understanding of how we can all get more profitable work, I am writing this.

First. Here are some statements that I think are true, that explains the labor policy of the National Recovery Administration:

"I have said this consistently and to everyone concerned—that this administration is not to be used for unionizing any industry. Neither is it the purpose of the Administration to compel the organization of either industry or labor."—Statement issued by Gen. Hugh S. Johnson, June 20.

"Circulars and other literature purporting to come from labor union agents have intimated or openly stated that it is a purpose of the National Recovery Act and Administration to unionize labor or that the only way labor can secure benefits under that act is to join this or that union. Similar statements purporting to come from industrial concerns have intimated that this or that newly formed company union is the only organization through which labor can get a fair deal under this act. Both statements are incorrect and such erroneous statements of the act and its administration tend to foment misunderstanding and discord.

"It is the duty of this Administration to see that all labor—organized as well as unorganized—gets a square deal, and the administration is organized to do and will do that duty. The improved labor conditions in the textile industry, which is largely unorganized, are an example of this. It is not the duty of the Administration to act as an agent to unionize labor in any industry and, as has repeatedly been stated, it will not so act. Manifestly the purpose of the act is to create and preserve harmonious relationships and to prevent industrial strife and class conflict.

"As I understand it, an open shop is a place where any man who is competent and whose services are desired will be employed, regardless of whether or not be belongs to a union. That is exactly what the National Industrial Recovery Act says. The statute cannot be qualified. The law states clearly that there should not be any requirement as to whether or not a man belongs to a union. Is anything clearer than that needed?"—Gen. Hugh S. Johnson in a statement in Cleveland, July 29, 1933.

You know it is hard enough for me to try and make a die-jobbing shop pay. I do not know what someone would do with it, that knows nothing about it.

When there was no work in sight, no union agitators or organizers bothered you and me, now when it looks as if we may be able to get some work, what are they going to do? Drive it away from Cleveland?

I hope for your good and mine you will try and keep it in Cleveland, Ohio.

J. J. BARTT.

PLAN OF EMPLOYEES' REPRESENTATION

PRINCIPLES OF REPRESENTATION

The National Tool Co. inaugurates this plan of employees' representation for the National Tool Co. in order to provide effective means of contact between the management and the employees, and an orderly and expeditious procedure for the prevention and adjustment of any future differences, to insure justice, maintain transquility, and promote the common welfare.

The plan of employees' representation, as hereinafter provided, shall in no way discriminate against any employee because of race, sex, or creed, or abridge or conflict with his or her right to belong or not to belong to any lawful society, fraternity, union, or other organization.

I. REPRESENTATION

1. Employees' representation shall be by voting divisions which shall be based upon the natural subdivisions of the plant and made with regard to logical groupings and locations. There shall be one or more employees' representative for each floor in the plant, or major fraction thereof (based on the average number of employees on the pay roll for 3 months immediately preceding the election) with a minimum of three employees' representatives under the plan.

2. Adjustments in units of representation, wherever necessary to secure complete and fair representation, shall be made in accordance with the recommendation of the joint committee.

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II. TERM OF OFFICE OF REPRESENTATIVES AND VACANCIES

1. Employees' representatives shall be elected for a term of 1 year and shall be eligible for reelection.

2. An employees' representative may be recalled upon the approval by the joint committee of a petition signed by two-thirds of the voters in the voting division of such representative and upon such approval he shall cease to be such representative.

3. An employees' representative shall be deemed to have vacated his office as such upon severance of his relations with the company, or upon being transferred from one voting division to another, or upon his appointment to such a regular position as would make him one of the persons described in paragraph 3 of section III hereof.

4. Vacancies in the office of an employees' representative, for which there is no alternate, as described in paragraph 16 of section IV hereof, may be filled for the unexpired term, in the discretion of the joint committee, by special elections conducted in the same manner as the regular annual elections.

III. QUALIFICATIONS OF REPRESENTATIVES AND VOTERS

1. Any employee who has been on the company's pay rolls for a period of at least 1 year immediately prior to nominations; who is 21 years of age or over, and who is an American citizen, shall be considered qualified for nomination and election as an employees' representative.

2. All employees who have been on the company's pay rolls for a period of at least 60 days immediately prior to nominations and who are 18 years of age or over, shall be entitled to vote.

3. Company officials and persons having the right to hire or discharge, or holding regularly a purely supervisory position, shall not be eligible as employees' representatives.

IV. NOMINATIONS AND ELECTIONS

1. Nominations and elections of employees' representatives shall be held annually in the month of May. Nominations (after the first nominations and election) shall be held on the second Tuesday and elections on the following Friday of such month. In the event of either of these days being a holiday, then the nomination or election, as the case may be, that otherwise would be held on such day, shall be held on the next succeeding full business day.

2. Nominations and elections shall be conducted by the employees themselves in accordance with rules and regulations prescribed by the joint committee, with only such assistance from the management as may be requested.

3. Nominations and elections shall be by secret ballot and so conducted as to avoid influence or interference with voters in any manner whatsoever, and to prevent any fraud in the casting or counting of ballots.

NOMINATIONS

4. On the day of nominations, each qualified voter shall be furnished a ballot stating the number of persons for whom he is entitled to vote. Such voter shall write on ballot the names or check numbers of the persons in his voting division whom he desires to nominate for election as employees' representatives

5. A voter may place in nomination twice the number of representatives to which his voting division is entitled.

6. If on any ballot, the name or check number of the same person shall appear more than once, the ballot shall be counted as a vote for such person only once.

7. In case the number of persons whose names or check numbers appearing on any ballot shall exceed the designated number as stated on the ballot, the ballot shall be void.

8. There may be three persons nominated for every office of employees' representative to be filled.

9. Those employees who received the largest number of votes, in any voting division, equal to three times the number of representatives to be elected shall be declared nominated and shall be candidates for election.

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ELECTIONS

10. On the day of elections each qualified voter shall be furnished by the joint committee, through tellers designated by such committee, a ballot on which the names of the candidates for employees' representatives shall be printed in the order of number of votes received at nominations. In case two or more persons shall have received at nominations the same number of votes, then the names shall be placed in the alphabetical order of their respective surnames.

The voter shall indicate his preference by placing a cross (X) opposite the name of the candidate or the name of each of the candidates of his choice.

11. The number of candidates for whom the employees in each voting division shall be entitled to vote for employees' representatives of such voting division shall be stated on the ballot. If this number is exceeded, the ballot shall be void.

12. Each voter shall deposit his own ballot in a box provided for the purpose by the joint committee, and the ballots shall be counted under the direction and supervision of the members of said committee who shall be employees' representatives at the time in office. The candidate or candidates of each voting division receiving the highest number of votes (in accordance with the number to be elected) shall be declared elected as the employees' representative or representatives of such voting division.

13. In the event of a tie, selection shall be made by lot under the direction of the joint committee.

14. In the event of a controversy arising concerning any nomination or election, it shall be referred to and decided by the joint committee.

15. The joint committee may make such provision as they may consider necessary for assisting any voter who may so request, in properly marking the ballot.

16. Candidates failing of election shall stand as alternates in the order of the number of votes received and in such order shall become employees' representatives as need may arise through vacancies.

V. MANAGEMENT'S REPRESENTATIVE

The company shall appoint a management's representative to facilitate close relationships between the management and the employees' representatives.

The management's representative shall represent the management in negotiations with the representatives, their officers, and committees. He shall respond promptly to any request from representatives, and shall interview all of the representatives, from time to time, collectively or separately, with reference to matters of concern to employees.

VI. JOINT COMMITTEES

1. The joint committee shall consist of the committee of the employees' representatives with the addition of the company's representatives named by the management, who may equal but shall not exceed in number the employees' representatives.

2. The joint committee shall select their own officers and arrange their own procedure.

VII. COMMITTEE MEETINGS

1. After each annual election the employees' representatives shall meet immediately for the purpose of electing a chairman, vice chairman, and secretary for the general body of employees' representatives.

2. Regular meetings of the general body of employees' representatives shall be held once each month.

3. Regular meetings of the joint committee shall be held once each month.

4. The joint committee and general body of employees' representatives shall meet between the hours of 3 and 5 in the afternoon, unless otherwise determined by joint approval of the chairman of the general body of employees' representatives and the management's representative.

5. Special meetings of the joint committee may be held as occasion may require, on approval of the chairman of the general body of employees' representatives and the management's representative.

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6. For time necessarily lost, through actual attendance, at regular or special meetings or conferences jointly approved, representatives shall receive from the company, payment commensurate with their average earnings.

7. Any matter may be referred by the management through the management's representative to the joint committee for consideration and report, and any matter may be presented by the joint committee to the management through the management's representative.

8. The company shall arrange a suitable place for meetings of the general body of employees' representatives and of the joint committee and the company shall defray such expenses as are necesarily incident to the discharge of duties herein set forth, when approved by a majority of the joint committee.

IX. PROCEDURE FOR ADJUSTMENTS

1. Any matter which in the opinion of any employee requires adjustment, and which such employee has been unable to adjust with the foreman of the work on which he is engaged, may be taken up by such employee, either in person, or through any representative of his voting division in writing, first with the department head; second, with the management's representative; third, with the management, who shall endeavor to effect a settlement, or who may with the approval of all the parties refer the matter to the joint committee.

2. Unless satisfactory disposition of any such matter has been effected within a reasonable time, any employee through his representative, or the management through the management's representative, may require such matter to be referred to the joint committee, by a request in writing addressed to said committee specifying in detail the matter requiring adjustment and the reasons which warrant its consideration by said committee.

The joint committee shall consider any such matter with reasonable promptness, at a regular or special meeting, and may adopt such means as are necessary to ascertain the facts and effect a settlement.

3. If the joint committee shall fail to effect a settlement, the president of the company shall be notified, and the matter may be referred, if the president and a majority of the employees' representatives on the joint committee agree to such reference, to an arbitrator or arbitrators, to be determined at the time according to the nature of the controversy.

X. GUARANTEEING THE INDEPENDENCE OF REPRESENTATIVES

1. It is understood and agreed that each representative shall be free to discharge his duties in an independent manner, without fear that his individual relations with the company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

2. To insure to each representative his right to such independent action, he shall have the right to take the question of an alleged personal discrimination against him on account of his acts in his representative capacity to the management's representative, to any of the superior officers, to the joint committee, and to the president of the company.

Mr. LESINSKI. And here is a plan by the Fisher Body Co.

(The plan above referred to is as follows:)

APPLICATION FOR MEMBERSHIP

FISHER BODY EMPLOYEES COOPERATIVE ASSOCIATION OF CLEVELAND, OHIO

Name_____
(Please print)

Address_____
Are you over 21 years of age? Yes.
No.

Clock No_____
Department where employed_____

I hereby voluntarily make application to become a member of Fisher Body Employees Cooperative Association of Cleveland, Ohio, and agree to abide

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by the constitution of such association, which has been submitted to me, and to be represented as therein provided.

Signed_____
(Employee's signature)

Date_____

Received_____
(Chairman—Secretary)

FISHER BODY EMPLOYEES' COOPERATIVE ASSOCIATION,
Cleveland, Ohio, May 2, 1934.

To employees of Fisher Body, Cleveland division, who are not members of Fisher Body Employees' Cooperative Association of Cleveland, Ohio:

On April 14, 1934, we addressed to you a letter, copy of which is enclosed, disclosing the formation of Fisher Body Employees' Cooperative Association of Cleveland, Ohio. With such letter was enclosed an application blank which an employee must sign to become a member of the association, and a copy of the constitution of the association.

Since the date of such letter over 3,500 employees at the Cleveland plant of Fisher Body have become members of the association, but you have not done so. The employees' committee, the governing body of the association, is composed of employees at the plant where you are working and were elected by you. We believe that this committee can more effectively represent you in bargaining collectively with the company than can any outside individual or group of individuals, and that it is in your interest to become a member of the association.

You, consequently, are urged immediately to sign the enclosed application blank and either deliver it to any of the following individuals, or mail it in the enclosed envelop, which will make you a member of the association.

Very truly yours,

George Kromer, Daniel Small, Ray Adams, Dick Chandler, Walter E. Doughty, Henry Dreyer, Edith Hall, George Hill, J. P. Keating, Frank Maslaynak, Leo Puchalla, Fred Reading, Agnes Renfrew, George Smith, Employees' Committee.

FISHER BODY EMPLOYEES COOPERATIVE ASSOCIATION OF CLEVELAND, OHIO,
April 14, 1934.

To employees of Fisher Body Cleveland Division:

In August 1933 a plan was adopted for representation of the employees of Fisher Body at its Cleveland plant, which resulted in their election of a works conference. This works conference has negotiated with representatives of the company on a great number of matters affecting the employees, and it is believed that this has been to their distinct advantage.

However, the conference believes that it can represent the employees more effectively if the plan is revised through the adoption of a revised constitution. Under this constitution, which was adopted by the works conference and a copy of which is enclosed, an association is created under the name Fisher Body Employees' Cooperative Association of Cleveland, Ohio. Under this an employees' committee will be elected annually from the various major departments, so that every employee who is a member can take his complaints to a fellow employee in his own department and know that he will be represented adequately and forcefully in negotiations and collective bargaining with the company. The election of the employees' committee will be by secret ballot under the sole control of employees who are members of the association. The members of the present works conference will serve as this employees' committee until the first election, which will be held in July of this year.

To become a member of the association you must fill out and sign the enclosed application blank and either deliver it to your representative upon the employees' committee or mail it in the enclosed envelope to the secretary of the association. Employees can secure the benefits of this plan and representation of their interest by the employees' committee only by signing and delivering this application blank.

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It is believed that the employees' committee, which is composed of employees at the plant where you are working and whom you elected, can more effectively represent you in bargaining collectively with the company than can any outside individual or group of individuals not familiar with the work or the conditions of your employment. The employees' committee is not and will not in any way be under the control or domination of the company or its management. No one from the company even has the right to attend meetings of the employees' committee, and the committee is and will be interested solely in representing and helping you.

It is hoped that the small expense of running the association can be financed by dances and other social affairs. At all events, the members of the association will not be requested to make any payments. You need not pay dues in order to get a square deal.

You are urged immediately to sign the enclosed application blank and deliver it to any of the following individuals or mail it in the enclosed envelope, which will make you a member of the association.

Very truly yours,

George Kromer, Daniel Small, Ray Adams, Dick Chandler, Walter E. Doughty, Henry Dreyer, Edith Hall, George Hill, J. P. Keating, Frank Maslaynak, Leo Puchalla, Fred Reading, Agnes Renfrew, George Smith, Employees' Committee.

Mr. LESINSKI. I have here a record of a shop committee meeting that was held under the auspices of the employers on January 29, 1935, and here is another report on a shop committee meeting on February 5, 1935.

(The reports above referred to are as follows:)

SHOP COMMITTEE MEETING, CLOSED, JANUARY 29, 1935

Department 134: Reports that the floor needs to be fixed.

Department 162: Would like to have the roof fixed. Faucets need fixing in locker room. Would like to have immediate attention. Department does not get enough stock.

Production control: Would like to have a new floor. Reports that oil from the screw department leaks through. It was brought up by three different representatives, and it was never taken care of.

Department 561: Would like to have window sash fixed. It chills the glue.

Department 563: Windows have not been painted as yet in the tool room. The tool and die makers are asking for more money.

The shop committee suggests that all the employees who are to get service pins should get them as soon as possible.

Shop committee suggests we should have a gavel at our meetings.

Shop committee reports that the cars are not parked in the lanes.

M. SMAREK, *Secretary.*

SHOP COMMITTEE MEETING, OPEN, FEBRUARY 5, 1935

Minutes of previous meeting read and approved.

Kleinecke.—Mr. Kleinecke commented on the minutes of the previous meeting as follows:

Flooring has been ordered for department 134 and stock room. Floors will be fixed as soon as this material arrives.

Regarding new floor in department 541, we hesitate to rip up this floor as part of our plans apprehend vacating this building. We do not desire to go to this expense unless it is absolutely necessary. Probably we could exercise a little more care as we do not want to put a new concrete floor in this department that might only be used temporarily.

Window sash will be fixed in department 561 very soon.

Messrs. Kovach and Colegrove are checking into the roof in department 162.

Regarding leaky faucets throughout the plant, Mr. Grothe suggests we have someone in each department check the faucets at noon and evening to make sure they are shut off tight. We could also shut off the main valve

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back on the line when they are through at noon and in the evening—this would protect these faucets. Mr. Kleinecke believes this is a good suggestion and we will give it attention.

Mr. Kovach will paint the windows in the tool room.

Service pins will be presented at a dinner meeting—same as those previously given. Our records will be completed within the next day or two. Mr. Kleinecke suggests that a committee be appointed to arrange the presenting of these pins.

Grothe.—Mr. Grothe advised that the topic pertaining to the tool and die makers asking for more money was a perfectly fair topic to bring up at the shop committee meeting—that is what these meetings and committees are for.

Mr. Grothe believes that the rates, as a whole, throughout the plant are fair and equitable. One of the chief difficulties is our lack of being able to put in sufficient time, but, of course, this is due to business conditions. It has been the expressed desire of everyone in the plant, as a whole, that what work there is should be spread out; and the management itself is heartily in favor of this. We realize that this has put our company, and the people themselves, somewhat to a disadvantage compared to institutions that have a force where they can work about 40 hours per week. We would like to work 40 hours per week too, but we have not been able to get enough business.

We do believe, in comparing our hourly rates as nearly as we are able to get information from other institutions, that we are in very favorable comparison—I mean the plant as a whole. I think that in the tool room itself, if you took the service bonus and the hourly rate, that we are about on an average with what you will find in other institutions.

In the first place, as I assured you before, our president is anxious at all times to do everything he possibly can for everyone. If anything, he leans backward to do it. He would be tickled if our business warranted more than we are doing.

We will come very close to breaking even for the year 1934, on a cash basis. Our losses will be just about the amount we set up for depreciation on building and equipment. Our operations from a cash standpoint, cash in and cash out, will be about an even break—that is not bad.

We have a regular schedule and scale of classification for each job and its rates, and one is related to the other. We have accumulated data on this from all angles. We think we have a very fair, just, and equitable set-up of relations of jobs throughout our institution. You men are probably not familiar with the method in going about in setting those rates. I think you should be more familiar with it. We would very much like to see a committee appointed by the chairman of the shop committee, consisting of three to five people, to go over with two or three of the management who are familiar with the way those rates are arrived at, and analyze the situation. The records are all open and we will be thankful for any assistance or help or criticism which may come from anyone at any time.

If you are talking about this company putting out more money, increasing its costs in general, we might as well close down. I will tell you honestly now that I would not recommend it for you. I would not go to the directors of this company now and suggest a general increase today. I don't think this would be fair to the institution. They have come across with everything we have asked for so far. If you could show just cause, I would be glad to fight it for you, but I would have to sell myself on this point first.

We know if we run our costs up higher that it will mean loss volume; and in the final analysis we will have less hours to work and our pay envelop will not be larger but may be smaller. I desire to be very frank with you and I'm telling you just what the situation is. The company is paying everything it can bear at the present time.

Right now, Mr. Clyne is working on some figures for Sears. Their plan is to go into a considerably bigger volume. They are talking about 30,000 machines for this year. I think they are talking a whole lot more volume than they have any chance to reach. I believe their volume ran around 15,000 last year. But I assure you if we have to go back to them and increase their cost still more, it will not give us more volume. Thirty percent of our business last year went through Sears.

Don't get the wrong opinion that I am trying to give you arguments in connection with this request; but I'm just trying to put the facts before you. I am not adverse to wanting larger pays; I'm in favor of it when it is possible,

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but I do not think today is the time when the company could, or should, even take it out of their treasury.

Mr. Grothe advised he would be glad to discuss at today's meeting, ideas, suggestions, and reasons why you think you should or should not have increases.

Joe Brown, stock.—Mr. Brown stated that he thought Mr. Grothe's suggestions were O. K. Suggests appointing a committee to see if the company can warrant an increase in wages. Mr. Forster, chairman, appointed Messrs. Joe Brown and Joe Gbur to serve on the committee with three employees of the tool room. A meeting will be held to discuss this item.

Forster, tool.—Department 541 needs a shop committee representative appointed as their representative was transferred to another department. Election will be held in this department this coming Thursday.

Oster, No. 162.—Stock on small parts coming up too slow. Mr. Heller will check with Mr. Clyne.

Knuff, No. 164.—Running too close on stock also. We have six or seven machines up there now and we cannot get parts for them. Mr. Heller will check with Mr. Clyne.

Due to the present method, one does not know the number of thread ends on the bobbins. Suggests that a special bobbin be fixed so a minimum amount of thread will always be on the bobbin, Mr. Grothe stated that this is a good suggestion. Mr. Knuff will submit this suggestion to the suggestion committee.

Brown, stock.—Elevator in varnish plant needs fixing.

Trucks that come from the receiving department should be sent up with 4 wheels instead of 3. Oiling would help a lot in pulling. Mr. Heller advised that we will have these trucks oiled.

Smith, No. 161.—Number 835 shuttles and no. 9306 needle plates have heavy scales. Believes they were burned. Mr. Heller will check.

Forster, tool.—Heater in the tool room needs connecting. This is in the southeast corner.

Floor in the engineering room needs cleaning.

Mildred Smerek.—Would like a candy machine in department 533 like the one in the general office, where one can see the variety of candy it contains.

Groh, maintenance.—Suggests repairs and complaints be brought up with the foreman first.

The maintenance men oftentimes ask the foreman what the job is and they do not know anything about it.

Gbur, inspection.—Wall on the fifth floor toward the stairway, where they keep the varnish barrels, is breaking away. Mr. Gabrielson will check.

Forster.—Some of the operators sit on the steps outside of the dining room to smoke. Suggests a place be made in the dining room where they can sit and smoke. Mr. Kleinecke will follow this through.

Heller.—We are making a drive on cutting down our scrap and repairs. It is our desire to get the best unit possible. We find that this is quite a factor in our costs. We made a little gain in the past through the cooperation of the foremen bringing up items at the foremen's meetings; and you boys can also help in the plant. We find that our cost per unit is running about $1.50 higher than we had anticipated. We generally set up our cost per B in November. We had a bad period in that quarter, which caused our cost to be quite high.

Mr. Clyne found where our cost per unit could be reduced about 75 cents by eliminating some of our scrap and repairs and reducing the number of people below standard. A lot can be done by putting forth special effort.

Grothe.—Those of you who were with the Theodor Kundtz Co. years ago know that they used to purchase standing timber and cut their own lumber. The reason for discontinuing that was that they could purchase lumber cheaper than what they could cut it, due to various conditions that came up. Then we used to make our flitches; this was discontinued because we could purchase our flitches for less money. The manufacture of veneers was also discontinued because they could be purchased cheaper. We were able to buy glue of an equal quality at less than our cost, so we stopped making our own glue. The same thing proved true with sandpaper. Right now we are on the fence as to whether we can purchase dimension stock cheaper than we can make it ourselves. When the time comes that we can buy it cheaper, we will go out and buy it because we must compete with other companies. There is a limit as to what every company can do in the way of costs. You people who are perform-

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ing operations are just as big a part of that as those in charge of the departments, or those at the head of the company. The reason we went out of the church and school business is because we could not compete. Our costs were too high. This is all a part of some of the management's worries.

Gabrielson.—Mr. Gabrielson advised that he is working on new designs for some of Sears cabinets. Several of their models will be redesigned. This will mean watching of all operations to see that the proper gage and fixtures are used.

The operaters in the wood division have been very enthusiastic and helpful when new styles have gone through. They have been sincere in performing their operations.

Kleinecke.—Mr. Kleinecke advised if any operator has any difficulty with his work we want this brought up—this all helps to bring down our scrap and repair items.

Relative to car parking; we have laid out lanes for that purpose. We will have to appeal to the shop committee men to watch that cars are parked properly. Suggest you tell the fellows in your departments to park in the lanes.

Relative to dates the departments are to take the trip through the plant, it was suggested that 1 week be skipped in order to bring the departments in proper order and according to the schedule.

Smith no. 561.—In going through the plant, one of the men nearly fell down the stairs. Suggests a shade be put on the light that is at the bottom of the stairway that leads into the shipping room. Light should also be put at the top of this same stairway.

Mr. Kleinecke advised that oftentimes it takes a long while before the suggestion committee has an opportunity to report on a suggestion that has been submitted to the committee. This is because some of the suggestions must be tried out.

Meeting adjourned at 4:30 p. m.

MILDRED SMEREK, *Secretary.*

Mr. LESINSKI. Here is a leaflet entitled "Wake Up, Aluminum Workers."

WAKE UP! ALUMINUM WORKERS!

OCTOBER 23, 1934.

DEAR FELLOW WORKER: It is an established fact that today the workers of all large industrial plants have set up their own employee organizations which are managed by themselves and for the purpose of advancing their own interests.

We aluminum workers have been asleep at the switch. We have stood by and let outside influences creep in and almost get a strangle hold on our rights and privileges as free American workers.

Surely we have had enough of the tactics of these outside agitators and their causing us to lose work and wages for no reason at all except to further their own selfish interests.

What do we aluminum workers want? Constant strife and trouble—never know when we are going to work or when we are going to loaf, just because some bird a thousand miles away decides to call a strike?

No. We want to work, we want fair wages, we want good working conditions, we want fair treatment from the company at all times, but above all we want peace and security not only for our jobs and ourselves but for our families and our community as well.

The record of the past year clearly proves we cannot obtain these ends if we continue to permit outside persons to manage or interfere with our local employment affairs.

If we aluminum workers want these very things we must wake up before it is too late. We must get together and organize ourselves and manage our own affairs. Surely we aluminum workers of this district have enough ability and common sense to know how to run our own business as workers.

Outsiders don't know what our local conditions are and don't care. Why in the name of common sense then, should we be suckers and let them take away thousands of dollars a month of our hard-earned wages and give us nothing but trouble in return.

Let us build up our own organization, use all our money for the benefit of ourselves, our families and our community, rather than to pay high salaries to selfish outside labor dictators.

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We aluminum workers of the New Kensington district for the protection of our own interests must set up such an organization—and now.

That organization must be one of workers only, managed by the workers alone.

It must not be dominated in any way nor affiliated in any way with outside interests.

It must not be dominated by the company.

Its sole aim and only reason for existence must be for the express purpose of protecting and promoting the welfare of the workers themselves.

Such an organization is badly needed by us at this time.

With full realization of this fact we, your fellow employees, have given much time and study to the type of organization set-up we all need for those purposes.

We have worked out a plan which, we believe, fully meets our requirements.

Our suggestions are—

That we aluminum workers set up our own protective organization.

That we ourselves draw up our own constitution and bylaws under which we will operate as an organization.

That we charter our organization under the laws of the Commonwealth of Pennsylvania, thus giving us legal status in the eyes of the laws and courts.

That we nominate and elect workers from among our own fellow employees to be the officers of our organization.

That the workers of each department elect from among the fellow workers of their department, representatives to act for them.

That all representatives elected by all departments shall comprise a general committee.

That a relief fund to pay benefits to the members in case of sickness, accident, or death be established.

That all dues paid by the members be used solely to pay sick benefits to members and to defray the operating expenses of our organization.

That all money in the treasury at all times is the property of the organization and under the control of its members, and not under the control of outside interests.

That under our own set-up we ourselves through our own officers and our own elected representatives will deal direct with the management on all questions relating to our employment relations, either general or individual.

That when a dispute arises between ourselves and the management that cannot be settled to mutual satisfaction the dispute in question would then be referred to an arbitrator such as the Labor Relations Board, the United States Department of Labor, or some other satisfactory agency.

This procedure has for its aim the peaceful settlement of disputes but in no way prevents nor interferes with the workers right to strike.

That, should the organization be dissolved at some future time, all money in the treasury shall be paid back to the members in good standing on a pro rata share based on the years of continuous membership.

It's time we wake up and ask ourselves the following questions:

Shall the mismanagement of our affairs by outsiders continue or shall we begin to manage our own affairs?

Shall we aluminum workers continue to let outsiders interfere with our business?

Shall we continue to have strife and turmoil and be subject to strike calls, instead of peace and security?

Shall the disgraceful record of the past year be repeated?

Fellow workers, the answer to these questions lies entirely with you.

The issue is clear. We must not straddle the fence any longer.

Let's wake up before it is too late.

We must set up this organization for ourselves, to help us when sick and unable to work, to protect our rights, and to protect the peace and security of our homes and our community.

As a worker of this community, as a citizen of this community, you owe it to yourself, to your family and your community to get behind this movement with your whole-hearted cooperation and support.

Sign your card today.

Sincerely yours,

THE ORGANIZATION COMMITTEE.

P. S.—Amount of dues and amount of benefits payable will be determined by the members themselves after we get started.

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Mr. LESINSKI. This is a copy of an application for employment in the Truscon Steel Co. division, presented by the employers.

APPLICATION FOR EMPLOYMENT

The _____ Company
Street _____
City _____

The undersigned hereby applies for employment by you and for your information in considering this application respectfully represents the following information to be true and correct:

1. _____ _____ _____ _____
(Name) (Trade)
2. _____ _____
(Present address) (How long
3. _____ _____ _____
(Married) (Single) (Number children, if any)
4. _____ _____ _____
(Nationality) (Age) (Learned trade where?)
5. _____
(Worked at trade how long?)
6. Previous employment during last 3 years:
_____ _____
(Name of employer) (Address)
_____ _____
(Name of employer) (Address)
_____ _____
(Name of employer) (Address)

NOTICE

In accordance with the provisions of sections 5 and 7 (a) of the N. I. R. A., the applicable portions of which are printed on the reverse side hereof, it is the labor policy of the _____ Company that every individual employee shall have the opportunity (1) to deal and contract directly with the company in regard to his wages and working conditions; or (2) to bargain collectively through any labor union representative selected by said employee and such other of the company's employees as may notify the company of their desire to be so represented; or (3) to bargain collectively through a committee of fellow employees representing him and other company employees.

7. If this application for employment is accepted, I now choose to deal with the _____ Company for the term of 1 year in accordance with plan no. ____.

8. Do you now agree that if your application is accepted that you will work with other employees without regard to their method of dealing with this company _____.

Telephone: _____

_____
_____
(Address)

[Printed on back of application]

NATIONAL INDUSTRIAL RECOVERY ACT

SEC. 5. * * * Nothing in this act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof. * * *

SEC. 7 (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing * * *

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[Front of postal card]

Mr. Tom Smetana, 3064 E. 63rd St., Cleveland, Ohio

[Printed on back of postal card]

DEAR SIR: This card is sent to all factory employees of the Truscon Steel Co. by a committee to know whether you desire to return to work or stay out on strike. Your wish as expressed on the return card will not be shown to any officials of the company but will go only to the Department of Labor and not for publication.

Please sign and mail the attached card at once.

THE COMMITTEE.

[Printed on attached postal card]

The undersigned employee desires to return to work immediately.

Sign here _____

[Printed on back of attached postal card]

P. O. BOX 5641

CLEVELAND, OHIO

Mr. LESINSKI. And this is a card which they sent out.

This is a copy of the by bylaws of the plan of employees' representation of the Truscon Steel Co., pressed steel division.

I would like to say, Mr. Chairman, that the above data given is contrary and against section 7 (a) as written in the National Industrial Recovery Act. Now, this data [indicating typewritten statement] is the report of a detective agency acting under the guise of being a legitimate union. It has in its employ employees who mingle or belong to the unions and who report all the doings of the union and the employees.

(The report is as follows:)

TRUSCON STEEL CO., PRESSED STEEL DIVISION, CLEVELAND, OHIO, PLAN OF EMPLOYEES' REPRESENTATION

PRINCIPLES OF REPRESENTATION

In order to give to the employees of Truscon Steel Co. (hereinafter called the "company") a voice equal with that of its management (hereinafter called the "management") in the consideration of all questions relating to rates of pay, rules, working conditions, health, safety, hours of labor, and other similar matters of mutual interest, and in order to provide an orderly and expeditious procedure for the prevention and adjustment of any future differences, a method of representation of employees is hereby established.

This plan of representation hereinafter provided (hereinafter called the "plan") shall in no way discriminate against any employee because of race, sex, or creed, or abridge or conflict with his or her right to belong or not to belong to any lawful society, fraternity, union, or other organization.

1. Employee representation shall be by voting districts which shall be composed of the various departments and units of the plant and office combined to maintain a logical voting balance in each voting district and known as a "group."

2. Adjustments in voting divisions, whenever necessary to secure complete and fair representation, shall be made in accordance with the recommendations of the joint council hereinafter in section VII provided for (hereinafter called the "joint council.")

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3. The voting districts consist of the following and are numbered as indicated.

Group no. 1.—Scrap and shear, shear and blank, heavy stamp and drum, die storage, pickle and anneal, tool room, layout, inspection, salvage, blacksmith. Basic employment, 70.

Group no. 2.—Axle housing, welding, food compartment, platform and flask, frame stamp, frame assembly, drill room. Basic employment, 80.

Group no. 3.—Shipping, receiving, stores, raw materials, millwrights, carpenters, tinners, laborers, electricians, cranemen, tractor men, power plant, sweepers. Basic employment, 85.

Group no. 4.—Refrigerator—Press and shear, refrigerator—painting, refrigerator—ding men. Basic employment, 95.

Group no. 5.—Refrigerator—Rough assembly. Basic employment, 75.

Group no. 6.—Refrigerator—final assembly, refrigerator—door assembly, refrigerator—packing and crating. Basic employment, 75.

Group no. 7.—Accounting, bookkeeping, clerks, cost department, engineering, estimating janitors, material department, order department, production department, payroll department, purchasing, rate setters, sales department, stenographers, telephone operators, watchmen, welfare (hospital, employment, etc.). Basic employment, 70.

4. There shall be one employee representative for each group of the foregoing designated basic employment figures or under.

5. For each additional 75 percent over the basic employment figure which a group may increase an additional representative shall be allowed.

II. TERM OF OFFICE OF REPRESENTATIVES AND VACANCIES

1. Employee representatives shall be elected for a term of 1 year, and shall be elegible for reelection.

2. An employee representative may be recalled upon the approval and by the joint council of a petition signed by two-thirds of the voters in the voting division of such representative, and upon such approval he shall cease to be such representative.

3. An employee representative shall be deemed to have vacated his office as such upon severance of his relations with the company, or upon being transferred from one voting division to another, or upon his appointment to such a position as would make him one of the persons described in paragraph 3 of section III hereof.

4. Vacancies in the office of an employee representative for which there is no alternate as described in paragraph 15 of section IV hereof may be filled for the unexpired term, at the discretion of the joint council, by special elections conducted in the same manner as the regular annual elections.

III. QUALIFICATIONS OF REPRESENTATIVES AND VOTERS

1. Any employee of the company who has been on its pay rolls for a period of at least 90 days immediately prior to the day on which nominations shall be made as hereinafter provided (hereinafter referred to as the day of nominations), who is 21 years of age or over and who is an American citizen, shall be qualified for nomination and election as an employee representative.

2. All employees of the company who have been on its pay rolls for a period of at least 30 days immediately prior to the day of nominations shall be entitled to vote at nominations and at elections.

3. The officials of the company and persons having the right to recommend the hiring or discharging of employees, or regularly holding purely supervisory positions shall not be elegible for election as employee representatives or qualified to vote for employee representatives.

IV. NOMINATIONS AND ELECTIONS

1. Nominations and elections of employee representatives shall be held annually in the month of July. Nominations shall be held on the first Tuesday and elections on the following Friday of such month. In the event that either of such days in any year shall be a holiday, then the nominations or elections, as the case may be, that otherwise would be held on such day, shall be held on the next succeeding full business day.

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2. The nominations and elections shall be conducted by the employees themselves in accordance with rules and regulations prescribed by their rules committee and with only such assistance from the management as may be requested.

3. Nominations and elections shall be by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and so as to prevent any fraud in the casting or counting of ballots.

4. On each day of nominations, each employee of the company then qualified to vote as hereinabove in section III provided shall be furnished with a ballot stating the number of persons for whom he is entitled to vote at nominations on such day; and such voter shall write on such ballot the names or check numbers of the person in his voting division whom he desires to nominate for election as employee representatives.

5. In voting at nominations each duly qualified voter may vote for a number of persons equal to twice the number of persons whom his voting division is entitled to elect as employee representatives.

6. If on any ballot cast at nominations the name or check number of the same person shall appear more than once, such ballot shall be counted as a vote for such person only once.

7. In case the number of persons whose names or check numbers shall appear on any ballot at nominations shall exceed the permitted number as stated on the ballot, the ballot shall be void.

8. There may be three persons nominated for every office of employee representative to be filled.

9. The employees in any election division, up to three times the number of employee representatives to be elected by the employees in such division, who shall have received the largest number of votes shall be declared nominated and shall be the candidates for election by such employees on the next day of elections.

10. On each day of elections, each duly qualified voter shall be furnished by the committee on rules through tellers designated by such committee with a ballot on which the names of the candidates are printed with provision for marking his or her choice.

11. Each voter shall deposit his own ballot in a box provided for the purpose by the committee on rules and the ballots shall be counted under the direction and supervision of the said committee. The candidate or candidates of each voting division of the number to be elected by such voting division who shall receive the highest number of votes shall be declared elected as the employee representative of employee representatives of such division.

12. In the event of a tie, the rules committee shall determine the choice by the toss of a coin.

13. In the event of a controversy arising concerning any nomination or election, it shall be referred to and decided by the committee on rules.

14. The committee on rules may make such provision as it may consider necessary for assisting any voter who may request it in properly marking his ballot.

15. Candidates failing of election shall stand as alternate in the order of the number of votes received, and in such order shall become employee representatives as need may arise through vacancies.

V. MANAGEMENT'S REPRESENTATIVES

The company shall appoint a special management's representative to facilitate close relationships between the management and the employees' representatives.

The management's representative shall represent the management in negotiations with the representatives, their officers and committees. He shall respond promptly to any request from representatives, and shall interview all of the representatives, from time to time, collectively or separatedy, with reference to matters of concern to employees. He may attend any meeting of the joint council and committees but shall not have any vote thereat.

The management of the works and the direction of the working forces including the right to hire, suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the management; and, as expressly provided herein, these rights shall not be abridged by anything contained herein.

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VI. COMMITTEES

1. The term "a majority" when used with reference to a joint committee vote shall be construed to mean a majority of employees' council members and a majority of management council members.
2. Each committee shall be composed of not more than five members, and shall appoint its own chairman and secretary.

VII. COUNCILS

1. After each annual election the representatives shall immediately meet for the purpose of electing a chairman, vice chairman, and secretary of employees' council.
2. The chairman of the employees' council shall also appoint members of the following committees, viz: (1) Rules, ways, and means, (2) wages, employment, schedules, safety-first, (3) welfare and recreation.
3. Vacancies on committees shall be filled at a regular meeting of the management or employees' council.
4. The joint committees shall consist of the committee of the employees' council committees with the additional of the management council committees who may equal but shall not exceed in number the employees' council committee.
5. The joint committees shall select their own officers and arrange their own procedure, subject to appeal, in case of controversy, to the joint committee on rules, ways, and means.

VIII. COUNCIL MEETINGS

1. Regular meetings of councils shall be held every other month.
2. On alternate months, the joint councils shall meet.
3. Councils shall meet between the hours of 3 and 5 in the afternoon, unless otherwise determined by joint approval of the chairman of the respective councils and the management's special representative.

IX. COMMITTEE MEETINGS

1. Meetings of committees and of joint committees may be held as occasion may require, on approval of the respective committee chairman and the management's special representative.
2. For time necessarily lost, through actual attendance, at regular or special meetings or conferences jointly approved, representatives shall receive from the company, payment commensurate with their average earnings.
3. Any matter may be referred by the management through the management's representative to any committee or council for consideration and report, and any matter may be considered by a committee or council to the management through the management's representative.
4. The joint committee on rules, ways, and means, shall arrange a suitable place for meetings of the employees' council and of the several committees and joint committees and the company shall defray such expenses as are necessarily incident to the discharge of duties herein set forth, when approved by a majority of said committees.

X. ANNUAL CONFERENCES

An annual conference between the employees' council, the management council, and the mangament's special representative shall be held at a time and place determined by the joint council, which shall be in charge of the procedure at such conference.

XI. PROCEDURE FOR ADJUSTMENT

1. Any matter which in the opinion of any employee of the company requires adjustment, and which such employee has been unable to adjust with the person in charge of the work on which he is engaged, may be taken up by such employee in writing, either in person or through the employee representative of his voting division or district and in the following order: First, with the department head; second, with the group representative; third, with the management's special representative; fourth, with the joint council.

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2. If the joint council shall fail to make any such decision it shall notify the general manager or president of the company to that effect, and, if such general manager or president and a majority of the employees' representatives on the joint council fail to effect a satisfactory settlement, they shall refer the matter to one or more arbitrators who shall be selected by the joint council.

XII. GUARANTEEING THE INDEPENDENCE OF THE REPRESENTATIVES

It is understood and agreed that each representative shall be free to discharge his duties in any independent manner, without fear that his individual relations with the company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

To insure to each such representative his right to such independent action, he shall have the right to take the question of an alleged personal discrimination against him, on account of his acts in his representative capacity to any of the superior officers to the joint council and to the general manager or president of the company.

Having exercised this right in the consecutive order hereinabove indicated and having failed to obtain a satisfactory remedy within 30 days such representative shall have the further right to appeal to the State Department of Labor or the Secretary of Labor of the United States. The company shall furnish said State Department or said Secretary with every facility for the determination of the facts and the findings and recommendations of said State Department or of said Secretary shall be final and binding.

XIII. AMENDMENTS

This plan may be amended by a two-thirds vote of the entire membership of the joint council at any joint annual meeting of such representatives or at any joint special meeting of such representatives called for that purpose.

Drafted and submitted by the temporary committee, July 18, 1933.

A. G. BIETT, *Chairman, Pro Tem.*
A. S. KOS, *Secretary, Pro Tem.*

Employees' representatives to temporary committee provisional group: J. Jenkins, R. M. Watzulik, J. W. Dennis, B. Roalofs, M. Speerbrecker, J. Kelly, S. Dlugas, K. Purdy, R. Bregart, M. Donahue, A. G. Biett, W. E. Nenadel, A. S. Kos.

Managements representatives to temporary committee: E. Kestner, J. Williams, C. E. Daugherty.

Management special representative: F. M. Small.

THE CORPORATIONS AUXILIARY CO.,
Cleveland, Ohio, October 15, 1934.

———— ————,
Cleveland, Ohio.

DEAR SIR: Attached is a copy of a special report on the Mechanics' Educational Society which should be of particular interest to you. Your special attention is directed to reports of locals beginning on page 2 in reference to Cleveland and to the marked paragraphs concerning Cleveland throughout the report.

The letter from Van Gelde foreshadows a movement, which if carried out might change the whole complexion of the labor movement, or on the other hand might mean endless strife in the industry.

This report will be indicative to you of the effectiveness of our contact with labor activities in every direction.

The encouragement given the American Federation of Labor in late rulings and announcements is not going to be lost sight of by the heads of their organization.

You, like most manufacturers, have a percentage of loyal, right-thinking men among your employees. Give them some encouragement, some support, some leadership by men in their own status.

Every authority is agreed that to avoid further serious labor disturbances, it is up to the employer first to keep himself fully informed of the sentiment among his employees and second to establish a leadership among his loyal

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employees that they may become familiar with some of the problems of management, as well as their rights under the present laws.

For 35 years this company has been assisting employers in these most vital problems. Let us tell you at a convenient time how this can be done—no obligation.

Very truly yours,

THE CORPORATIONS AUXILIARY CO.,
FRANK GREGG,
Assistant to General Manager.

OCTOBER 9, 1934.

SPECIAL REPORT COVERING ACTIVITIES OF THE MECHANICS EDUCATIONAL SOCIETY OF AMERICA

Organizational efforts on the part of Organizer J. J. Griffin in Connecticut cities such as Bridgeport, Torrington, and New Haven have met with such marked success that General Secretary Matthew Smith has left Detroit and is now on his way to Bridgeport, Conn., for the purpose of there conferring with Griffin about the progress being made. It is expected that he will also lay plans for more solidly organizing other Connecticut industrial cities than those mentioned.

Radical Mechanics Educational Society of America member, Richard Denske, who was largely responsible recently for Mechanics Educational Society of America organizational activity at the Hookless Fastener Co., Meadville, Pa., is no longer in Meadville. He proceeded to Dayton, Ohio, from Meadville intending to carry on organizational work there but remained only a brief period due to his inability to secure employment. Thence, Denske proceeded to Philadelphia hoping to secure employment at the Budd Wheel Plant where it was reported that several hundred diemakers were being engaged. He was evidently unsuccessful in this respect because it has since been learned that Denske has gone to Bridgeport, Conn., to aid in the organizing work there.

In view of the comparative inactivity along organizational lines in the Detroit area it can be anticipated that organizing efforts will be concentrated in the East for a time, principally in Connecticut cities and the presence of General Secretary Matthew Smith, Organizer J. J. Griffin, and radical member Richard Denske will only serve to complicate the situation.

In Detroit organizational efforts on the part of Organizer Ralph E. Covert are being centered upon the toolmakers employed at the Plymouth Motor Corporation. Several meetings of Plymouth toolmakers have been held recently in the neighborhood of the plant. The response has been less satisfactory than anticipated by Covert for the simple reason that the few toolmakers who have been encouraged to attend the meetings are reluctant to affiliate with the Mechanics Educational Society of America until such time as Matthew Smith is ousted from his position as general secretary.

Among the rank and file members in the Detroit area there is marked dissatisfaction being evidenced in connection with Matthew Smith's continued control of the Mechanics Educational Society of America and this dissatisfaction is being evidenced through poor attendance at meetings and the failure of more than a small percentage of the members to pay dues regularly.

Mechanics Educational Society of America, Local No. 8 (West Side local), has been concentrating its organizational efforts temporarily on workmen at the Koestlin Tool & Die Co. The organizational efforts have met with practically no success. A meeting for day shift and afternoon shift employees at this plant, scheduled to be held at the headquarters of Local No. 8, Grand River and Avery Avenues, on Sunday morning, October 7, was poorly attended. There were ony a handful present and practically all of them are the regular "stand-bys" who loaf about Schiller Hall, Mechanics Educational Society of America headquarters.

Mechanics Educational Society of America organizers are informing members employed in the various shops who are working in excess of 40 hours per week to keep a record of the amount of hours worked in excess of 40 hours per week and, if time and a half is not paid for such excess hours, the Mechanics Educational Society of America intends bringing the matter of the time before the Detroit Regional Labor Board in the hope of securing time and a half for all time over 40 hours in any one week. The claim is being made that it

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is a violation of the code for the jobbing shops to work employees more than 40 hours per week.

On September 29, a regular meeting of the interstate committee of the Mechanics Educational Society of America, which is the national governing body, was held at Schiller Hall in Detroit, with the following locals represented by delegates:

Local No. 2 (Flint), Harry Harrison; Local No. 4 (Toledo), G. Becker, Section No. 1; Local No. 4 (Toledo), Lee Powers, Section No. 2; Local No. 5 (Cleveland), J. Mannes; Local No. 7 (Detroit), S. Mimlin; Local No. 9 (Detroit), E. Marion; Local No. 9 (Detroit), Francis Knight (alternate); Local No. 12 (Defiance, Ohio), Miller; Local No. 20 (Cleveland), R. J. Schmidt; Local No. 22, J. Shimek; and Local No. 27, J. Voelker.

The meeting was called to order by National President Jesse Chapman, who came to Detroit especially for the purpose of conducting this meeting.

It was voted to permit James Morton of Local No. 1 to sit in the meeting without voice or vote.

Under reports of locals, Harry Harrison reported Flint Local No. 2 in financial difficulty. He expressed the belief that the financial status of the local will improve when the fall program starts at Flint plants.

In reporting for Toledo Local No. 4, section no. 1, Delegate Becker stated that the job shops in Toledo are beginning to hire diemakers. He reported little activity at the Spicer Manufacturing Co. and said that negotiations are pending with this company.

For Cleveland Local No. 5, J. Mannes stated that the membership of this local now consists of what remains of the Cleveland membership after the setting up of four new Cleveland locals. The membership constitutes almost entirely jobbing shop men.

East Side Detroit Local No. 7 was represented by S. Nimlin. He stated that he was carrying instructions from his local to protest the dispensation granted the Cleveland local recently by National President Chapman, allowing them to continue collecting dues of only 50 cents per month from members of section no. 1. He also reported that an investigation committee was calling on the interstate committee with respect to the suspension of John Anderson, Communist, formerly a member of Local No. 7.

It was then moved and seconded that the committee referred to by Nimlin, representing Local No. 7, be admitted. An amendment was attached providing that the committee be heard after the last order of business. There was a second amendment to the effect that only the chairman of the committee be allowed to present the case. The original motion and both amendments were carried.

A motion was lost providing that the vote on all questions be a roll call vote so that the minutes will show how each delegate votes.

A motion to the effect that all communications brought before the interstate committee must be official communications from some official body of the Mechanics Educational Society of America, was also lost.

President Chapman then called attention to the fact that the delegate representing Local No. 4 had neglected to mention a Halloween party scheduled by Local No. 4 to be held in Toledo on the last Saturday in October.

Reports of locals was continued, with E. Marion reporting for Detroit Local No. 9. His remarks were principally general. He said that the employment situation has improved considerably and reorganization is progressing rapidly.

Miller, representing Defiance, Ohio, Local No. 12, reported briefly to state that this local is in need of attention in the near future.

Delegate R. J. Schmidt, reporting for Cleveland Local No. 20, stated that the local is in excellent shape and reported dues collections have increased materially. He mentioned a rally of all Cleveland locals which is expected to be held on October 19. He invited National President Chapman to be present at this rally. Chapman accepted. He reported the employment situation as being normal and most of the activity being in the electrical industry. He stated there is a new set-up in Cleveland as a result of the formation of four new locals. He declared that a trust fund has been established for the liquidation of all debts of the old local, No. 5. One trustee has been elected for each of the five Cleveland locals to administer this trust fund. Back dues collections and strike assessment collections will go to the fund.

Minutes of the previous interstate committee meeting were accepted as read.

A motion to the effect that National President Chapman's action with

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respect to the Cleveland dispensation be approved and an amendment to this motion to the effect that an emergency committee of four, living within reasonable distance of Toledo, be elected and this body have power to make emergency rulings between interstate committee meetings, were both lost.

It was voted that in the future no executive officer of the Mechanics Educational Society of America shall grant dispensations without authority from the interstate committee.

A motion providing for the election of a committee of three to make recommendations with regard to the Cleveland dues situation was withdrawn.

A motion was carried providing for the interstate committee instructing Cleveland delegates to call a mass meeting of section no. 1 members at which interstate committee members will be present and that a motion be put to this meeting regarding an increase in dues to $1 per month for section no. 1 members and that in the meantime the dues will remain unchanged until this meeting is held.

It was voted to accept the financial report of the national office, prepared by General Secretary Matthew Smith.

Under communications, a letter received from the Marine Workers Industrial Union (Communist), addressed to General Secretary Matthew Smith, was read. The letter follows:

"MATTHEW SMITH,
General Secretary, Mechanics Educational Society of America,
Highland Park, Mich.

DEAR BROTHER: Last May our attorney, M. H. Goldstein, wrote to you inquiring about your organization, and I have your answer dated May 21. You refer in your letter to a possible General Trades Council of America, formed of various independent unions throughout the country, and I am writing at this time to discuss the matter further.

We feel that coordinated action of the independent unions is not only desirable but absolutely necessary if we are to survive. I am not aware of any real movement of this sort under way at the present time, and if you do I would be glad to hear about it.

Our organization has expanded considerably since our strike victory in Camden last May, and today comprises 5 locals with around 7,000 members. We still have much organizing and consolidating to do on the east coast, but there is no serious competition in the field from the American Federation of Labor or anybody else. In the New England area I have come contacts with the Electrical Industry Employees Association, which claims around 30,000 members in the electrical industry, and the United Shoe and Leather Workers, which has the shoe industry in New England sewed up pretty tight. There are numerous smaller independent unions in the Philadelphia area that might be interested, and some Federal unions that we could approach.

It seems to me that if some of us would take the initiative a fruitful national conference could be swung to take preliminary steps toward building the sort of council you mention. At present there is very little contact between independent unions, and especially where they are located in different sections of the country. This isolation weakens the individual unions and the whole movement, and must be remodeled sooner or later, or many of the independents will go under.

I am not very hopeful of radical changes of policy being made at this coming convention of the American Federation of Labor. Do you think there is any possibility of the independents making a concerted drive for admission to the American Federation of Labor as autonomous bodies? If this were done I am sure we could win considerable support from the progressive, industrial type unions within the American Federation of Labor, but there does not seem to be any evidence of such a concerted movement of the independents at the present time.

If this is not done at San Francisco, it seems to me we have no choice but to go ahead along the lines you have suggested. It seems to me that a powerful independent movement could be organized if it were handled properly, and it would be the salvation of many organizations which are now struggling to keep alive. One of the major things to guard against would be the Communist element, which would be quick to capitalize on any antiAmerican-Federation-of-Labor move, and would try to steer the whole thing into the T. U. U. L. and that would be fatal. The whole proposition would have to be managed with tact and extreme care, but I am confident that there is a

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strong enough sentiment for cooperation existing in independent unions, that it could be done.

Please let me know your opinions on these matters and any information you may have as to possibilities of starting something.

Fraternally yours,

(Signed) PHILIP H. VAN GELDE,
Executive Secretary

It was voted to have General Secretary Matthew Smith contact with executive officers of the Marine Workers Industrial Union on his trip East to visit various Eastern locals.

It was voted to send an encouraging letter to M. W. Lyon, who is carrying on M. E. S. A. organizational work in California. It was voted to have National President Chapman and Delegate R. J. Schmidt from Cleveland Local, No. 20, write similar letters. It was decided that in the event the situation warrants, up to $50 in supplies will be sent to Lyon.

It was voted to have the general office pay Organizer J. J. Griffin, who is carrying on organizational activities in the East, a salary of $10 per week and require the Bridgeport, Conn., local to pay full per capita tax to the main office.

The establishment of the Cleveland trust fund was approved.

It was voted to have the bylaws printed and sold to the various M. E. S. A. locals at a profit of 1 cent per copy.

It was voted to hold the next interstate committee meeting on the evening of Saturday, October 13, at 8 p. m. It was voted to hold this meeting in Cleveland, Ohio.

In accordance with the resolution passed earlier in the meeting the time had arrived to hear the investigation committee of Local No. 7 with respect to the suspension of John Anderson. However, the delegates had left for home and therefore the committee could not be heard.

Adjournment followed in the regular order shortly after midnight.

A meeting of M. E. S. A. shop stewards (tool and die society) was held at Schiller Hall, M. E. S. A. headquarters, on Monday evening, October 1.

Lemay resigned as president of the shop stewards and made the explanation that personal business interferes with his attendance at the meetings. Nominees for Lemay's office were Ellison, Carlson, and Steimer. Ellison asked to be excused as a nominee. When the vote was tabulated it was reported that Steimer was elected.

Organizer Harrison gave an address with respect to the claim of tool and die jobbing shop managements that under the code for tool and diemaking industry they are permitted to work employees 48 hours per week during rush seasons. Harrison declared every effort should be made to require the tool and die jobbing shops to live up to the code for this industry and in addition everything possible should be done to force the management of such establishments to pay time and a half for all hours in excess of 40 hours per week.

It was voted to have the shop stewards send a telegram to the National Labor Relations Board at Washington, D. C., protesting against working tool and die makers more than 40 hours per week. It was voted to hold a meeting for night-shift men working at Fisher Body Plant No. 23. It was decided that the Secretary of Local No. 9 will prepare a leaflet to be distributed to these night-shift men advertising a meeting for them to be held after they have completed work on Thursday morning, October 4.

A recommendation is to be made to the district committee that each member who pays November dues by December 1 will be supplied with a silver M. E. S. A. button.

It was voted to mail postal cards to all shop stewards announcing the next meeting, which is to be held on Monday evening, October 15, at 7:30 p. m.

(Special report)

Mr. LESINSKI. I have personally attended the hearings of the Henderson Committee in Detroit last December, that is, 1934. The rules laid down by Mr. Henderson, the chairman, were very stringent, and no witness was allowed to speak regarding section 7 (a); and when Mr. Henderson made his report I find that his committee has found two facts—regarding the speeding-up systems, continuous turnover,

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and the spying system and the selling of jobs by people within the higher-ups of the companies.

When this statement of Mr. Henderson was published, Mr. Knudsen, vice president and general manager of the General Motors Co., made a statement and attacked Mr. Henderson's data and also states that the older worker is fully protected by rule of seniority.

The following are several paragraphs of his statement [reading]:

The report by Leon Henderson, Director of the Research and Planning Division of National Recovery Administration was evidently gotten up as the result of a desire to do a big job in a short time.

When anyone analyzes an industry of the magnitude of the automobile industry in a few weeks' time, the report is bound to be hasty and more or less incorrect. This is especially true when the men working on the study have had no previous experience with the industry. In fact, some of the men who did major work on the Henderson report had never been in an automobile plant, even as a sightseer.

It would, therefore, seem appropriate for someone with experience to point out some of the ridiculous assertions of the report and to recommend that, if any more investigations are made, the statements made in the proposed report be checked before it brought out and be closer to facts when it does get out.

The first section of the report deals with the assertion that men over 40 have no place in the industry and that they are being discarded as fast as possible. This, of course, is not true. There are over 90,000 men over 40 working in the industry now. These men are protected by seniority rules as administered by the Labor Board, and are not discriminated against. The industry does not get rid of men over 40.

The industry has many men of 40 and over—even in the sixties—in good health, with many years of experience. Those who have grown up in the automobile-manufacturing centers know that the industry being young, only became a large employer of labor in the years 1915 to 1920, so if a man of 20 started in the early period of volume production, he would today be around 40 years old.

The Henderson report is unjust to men over 40, and unjust to the men who hire them. It is a fact that the relief records of other cities about the size of Detroit show that the percentage of older men is lower in Detroit than elsewhere.

Mr. LESINSKI. Personally, I know that Mr. Knudsen is in error in the statement he makes in that employees of 40 years and over have been continuously discriminated against and are out of employment.

I am also submitting a statement mailed to me by David L. Jones of 4600 Jonathan Street, Dearborn, Mich., and a statement mailed to me by Alfred P. Adamo; likewise a third statement signed by several persons.

(The statements above referred to are as follows:)

DEARBORN, MICH., *March 4, 1935.*

HON. JOHN LESINSKI,
Washington, D. C.

DEAR CONGRESSMAN: Regarding the hearings that are taking place in Washington, I regret I cannot attend personally. However, I wish to state my case briefly, regarding discrimination in Dearborn and the Ford Motor Co.

In 1933 I ran for mayor of Dearborn on a nonpartisan ticket and was nominated to run in the finals against Clyde M. Ford, who is backed by the Ford Motor Co. At this time they brought out headlines in the daily press that I was a Communist, and many of the men supporting me were put on the Ford Motor blacklist, including myself.

I did not think the company would extend the blacklist to other plants, but we have found that they do. I personally last week was called into the office of the Federal Mogul Corporation and asked to explain if I was a radical. I was told that the Police Department of Dearborn had called them up and stated that I was working in the shop and that I was a well-known Communist, and troublemaker and should be discharged. However, the company does not

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make any Ford parts, so they told me to continue work so long as I did not organize anything radical in their plant.

I have a letter from a former Department of Justice agent, who stated in 1933 he was called to Dearborn to investigate me, but found that I was a decent, law-abiding citizen, and the only thing guilty of was the fact that I did not politically agree with the Ford Motor Co. and its agents.

I was one of the public speakers during the last Democratic campaign (Communists do not make public speeches for Democrats), at which time I campaigned against Clyde M. Ford, the Republican candidate for Congress.

There are many men walking the streets and on the blacklist who are only guilty of supporting the Democratic Party. These men are branded Communists by the Ford Motor Co. and they are true 100-percent Americans.

The secret-service system of the Ford service department under Harry Bennett is to be found everywhere, in all meetings and halls, waiting to turn in anybody that does not agree with the Ford program politically, and once a name is turned in, he is blacklisted forever, not only in Fords but all over the city.

The Ford Motor Co. uses the Communist scare, yet at the present time, staying at the Dearborn Hotel, are 10 men from the Soviet Union working in the Ford plant, getting knowledge, as they put it, yet in beer gardens and around town they tell us openly that we are living under a rotten system and we should take a lesson from Russia. With millions out of work in America, Mr. Ford has room for 10 students of Russia.

The Ford Motor Co. works in cooperation with the police department of Dearborn, and men are not only blacklisted in the plant but are blacklisted from the relief rolls. Single men are told to get out of town or to Eloise, yet at the Ford plant we find car plates of men working there from every State in the Union.

It is mighty hard for men to testify against the Ford Motor Co.; they fear the service department methods, as in my case I still have a job at the Federal Mogul Corporation, but if I holler too loud I may be thrown out, as the Dearborn police tried to do, but to date failed. However, it proves they do discriminate.

I am very respectfuly yours,

DAVID L. JONES.

DETROIT, MICH., *March 30, 1934.*

Hon. FRANKLIN D. ROOSEVELT,
Washington, D. C.

SIR: A few weeks ago, we read, in the newspapers of this city, an article with a headline of approximately 3 inches in height, stating that the Ford Motor Car Co., had raised the pay of its employees to a minimum of $5 per day; but the newspapers have failed to state to the public that the company has dismissed thousands of men who were employed only a short time before.

Whether or not the newspapers fear the shadow of money influence or are ignorant of the fact, I cannot state. Of course, such a malicious action on the part of this company has been practiced for years, which is that when it has hired thousands of men, perhaps, it would "let them in one door and out of another." Still our newspapers waste a great deal of space concerning this company, and other manufacturing concerns, but fail to allow at least an inch of space for the public, so as to tell them the "direct and indirect facts."

A few months ago one of our local newspapers came out with an article stating that the Chevrolet Motor Car Co. was ready to hire 7,000 men, although, at the time, the factory was practically closed. This caused a great deal of harm to thousands of unemployed, who rushed to the factory hoping to secure a job, but, who instead, found it to have been only a false alarm. I believe, it is about time that the Government investigated such types of misleading information, as the public has received enough of the "matter" in the past years.

I also wish to inform you that some of our manufacturers are employing school children. Whether or not they do this so as to pay them child wages, I do not know. This, I believe, should also be given attention. Most of these children have had their fathers unemployed for some time, although they are physically fit and capable of rendering good service to these employers. I also believe that some of our great machine power should be eliminated, as machinery produces but does not consume. And, if we wish to have continuous prosperity, the man who consumes must produce.

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I realize that these are great problems for your honorable administration, due to the large amount of "political and unpolitical racketeering" which we have throughout our country. However, if the "iron hand" is used, some of them are bound to be eliminated, and the people of this great land of liberty will soon enjoy continuous happiness and prosperity.

I am closing with best wishes for your continued success, and trust that Easter will bring, to you and yours, long life and continued happiness.

Sincerely yours,

ALFRED P. ADAMO.

JANUARY 24, 1935.

Hon. JOHN LESINSKI,
House Office Building,
Washington, D. C.

DEAR MR. LESINSKI: The undersigned wishes to call your atention to my case, which is openly a case of discrimination against an American citizen and the right to make a living.

In 1932, I was laid off at the Ford Motor Co., Dearborn, Mich. Since then I have tried to get rehired. However, Mr. Dumire, head of the Dearborn welfare, and Chief Carl Brooks of the police department, openly state for political reasons my record such that I can't be reemployed at the Ford Motor Co.

Again, I wish to state that these men have me on a blacklist, and this list no doubt goes to other plants, as everywhere I go they call up Ford's for reference. I am turned down. In the plant my former foreman states I was a good worker and he would be glad to get me back.

My welfare investigator told me that Mr. Dumire has ordered that everybody with a bad record at Ford's to be cut off the welfare. As for my record, all I've been ever guilty of is working politically for the Democratic Party.

I would like to get some action regarding my case, and yet I know there are many more who are in the same position as I and are waiting for the same information.

Hoping you can do something about this matter of investigating into these cases of discrimination.

Yours, truly,

NICK M. ROMCEVICH.
WM. V. FAYETTE.
DAVID Y. MACBETH.
CLIFFORD BRIGGS.
PAUL KRAUSE.

Mr. LESINSKI. And I have here a cost sheet sent me by Luster Dairo, of 593 Superior Boulevard, Wyandotte, Mich.

(The cost sheet above referred to is as follows:)

JANUARY 8, 1935.

JOHN LESINSKI,
House of Representatives, Washington, D. C.

DEAR SIR: The following figures will show to what a sad ending we, "the workers of America", are drifting. We know our Government officials cannot do it all, but when two labor-saving devices such as these can save the company half of the wages and lay off 65 percent of the men, we know we cannot buy back our production. This will create a surplus and head us for another depression. In my opinion the manufacturers have failed to live up to the National Recovery Act.

New 3-Hi mills:

Roller	$0.145
Finisher	.113
Charger	.069
Do	.069
Catcher	.062
Piler	.069
Do	.069
Wages paid on 3-Hi mill per 1,000 pounds	.596

Old 2-Hi rough mills:

Rougher	$0.421
Catcher	.362
Spanerman	.274
Charger	.102
Piler	.227
Wages paid on pack or 2-Hi mills per 1,000	1.386

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$0.596×75=$44.70, wages paid for average 8-hour turn of 75,000 pounds.

$1.386×75=$103.95, wages paid to produce same 75,000 pounds of iron on 2-Hi mills.

$103.95—$44.70=$59.25, saved in wages alone by the company on 75,000 pounds through one operation. This is over and above the profit made on the 2-Hi.

The 3-Hi mill will turn out in 8 hours about the equivalent of three 2-Hi mills working 8 hours each. Therefore, only 7 men are used on this mill and 8 are laid off.

Pack shears:		Hand shears:	
Shearman	$0.070	Shearman	$0.202
Feeder	.051	Leader	.130
Helper	.042	Opener	.105
Opener	.056	Do	.105
Do	.056		
Wages paid to shear 1,000 pounds	.275	Wages paid to shear 1,000 pounds	.542

$0.275×200=$55, wages for average turn of 200,000 pounds on pack shears.

$108.40—$55=$53.40, saved in wages by the company in 8 hours shearing of 200,000 pounds.

$0.542×200=$108.40, wages that are paid to shear 200,000 pounds on hand shears.

The pack shears takes the place of about 4 hand shears, thereby taking 11 men off the job.

I think we would be able to take care of ourselves, if we were given a 6-hour day, 30-hour week and the company union outlawed. This would be half the battle as it would take care of approximately half the unemployed and shortly create jobs for many more which would lessen the number at the gate daily. Under these conditions we could take care of many things too numerous to mention here.

If we were not clubbed down when we try to organize we could take care of such cases as the one that happened the other day. A man cut his wrist and had five stitches put in and then was told to go back to work. He said he didn't see how he could work. Then the doctor laughed and as a joke asked the nurse to make him out a compensation check.

Men are told to join the social relief association which I would say is a bastard brother of the company union. We asked the management for a government supervised election instead of their "drag-to-the-pole-and-vote company union" but were refused. When we asked the men to sign a petition for the government election said petitions not being allowed in the plant, we found a foreman at each bank on pay day to intimidate the men.

No working man can afford to remain idle for a year as George Hynes of the Great Lakes Steel Co. was forced to do. When he was ordered back on the job by the Labor Board, the committee was told by the company that it could not be done. Refer to files of old National Labor Board for the Hynes case.

I am chairman of the mill committee of Michigan, Steel Lodge No. 4 of the Amalgamated Association of Iron, Steel, and Tin Workers of North America, but I am writing as an individual and not as an official.

Yours truly,

LUSTER DAIRO,
593 Superior Boulevard, Wyandotte, Mich.

P. S.—Please excuse mistakes as I have been working in the sheet mill for 33 years, since I was 13 years old, and not in college.

Mr. LESINSKI. I have here an editorial published February 10, 1935, in reference to the Henderson and Lubin report. This editorial was taken from one of the Detroit papers.

(The editorial above referred to is as follows:)

MORE MAN-HOUR FACTS NEEDED

The report of Messrs. Henderson and Lubin for the National Recovery Act on labor conditions in the auto industry finds that, due to increased technological efficiency and other factors, the number of man-hours required to produce a motor car has declined tremendously since 1929. One large manufacturer,

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is said, turns out a car a day for each 16 men employed, as compared to one for each 24 employes in 1930.

A few days ago we took occasion to point out that, based on labor employment figures submitted to the National Recovery Act by the industry itself, it would appear that more man-hours actually were used to make a car in 1934 than 5 years ago.

We should like very much to have the truth about this matter and vainly, so far, have urged a Government survey of it, not merely in the auto industry but in all industries. It seems important to us to know, with 47,000 families still on the welfare rolls in Wayne County, what the prospects for reemployment really are in this industry. It is important to the men unemployed, to Detroit, to Detroit taxpayers.

As for the balance of the Henderson-Lubin report and the charges it makes regarding labor conditions in the industry, we shall defer judgment. We are convinced the industry as a whole wants to correct the matters complained of and actually is trying sincerely to do so. Moreover, we recognize that these abuses are no uniformly chargeable to all of the companies, a fact, indeed which contributes largely to the difficulty encountered by the industry in attempting to correct them.

That is particularly true of the speed-up, which, where unreasonable, in effect is a form of competition at the expense of labor. The National Recovery Act, with the cooperation of the industry, has attempted to eliminate wages and hours as a factor in competition between rival manufacturers, but we know of no rule or form of agreement by which the speed-up can be checked.

In this, as well as in regard to other abuses charged by the report, the public must depend on the social conscience of this industry, which has been noted for its generous treatment of labor and now, happily, is showing signs as never before of an enlightened attitude on this subject. We might add that enlightened self-interest is sometimes, as much as competition, the life of trade.

Mr. LESINSKI. I am also submitting a copy of a letter received regarding the Ohio oil industry and their workmen.

(The letter above referred to is as follows):

E. E. Zeck, 447 Welathy Avenue, SE., Grand Rapids, Mich., worked for the Ohio Oil Co. in charge of bulk plants at Mansfield and Bucyrus.

Mr. Bell was State manager and had orders to live within the code of restrictions of labor. When Bell died, R. R. Webb took his place and then my orders were to make the men sign their time slips to work 40 hours per week and receive 47 cents per hour. We were to work as long as we desired and sometimes they put in 360 hours per month.

Work consisted of delivering gas and oil to the various stations. The stations work 48 hours per week, receiving $12 to $15 per week, depending on population. They were not paid for any additional hours.

Mr. Laughbaum worked at Bucyrus.

Mr. Callahan worked at Mansfield.

Mr. LESINSKI. That concludes all the data I wish to present, Mr. Chairman.

Mr. WOOD. That will conclude the hearing this afternoon. The committee will adjourn.

(Whereupon, at 4 p. m., the committee adjourned.)

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LABOR DISPUTES ACT

TUESDAY, MARCH 19, 1935

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

The committee met at 10 a. m., Hon. William J. Connery, Jr. (chairman), presiding.

The CHAIRMAN. The committee will please come to order.

We now have under discussion H. R. 6288, "a bill to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes." And our first witness will be Mr. Francis Biddle, chairman of the National Labor Relations Board; and I suggested to Mr. Biddle that he proceed for about 15 minutes with a general statement, and then the committee will ask him questions. We have another witness that we want to hear this morning; and as the bonus bill is called up in the House this morning it will be necessary for us to adjourn promptly at 12 o'clock so that we can all be there.

I would like to say at this time for the benefit of the committee that tomorrow Mr. Green, president of the American Federation of Labor, will be a witness, and then we will recess until a week from tomorrow. Then we will hear Mr. Emery of the National Manufacturers Association and then, if it is agreeable to the committee, in respect to the hearings, we will hear from Madam Perkins, the Secretary of Labor.

Mr. WOOD. That is perfectly agreeable to me.

STATEMENT OF FRANCIS BIDDLE, CHAIRMAN NATIONAL LABOR RELATIONS BOARD

Mr. BIDDLE. Chairman Connery and members of the committee, I should like to approach this bill which I carefully read and know thoroughly from three different angles.

The first approach about which I will speak very briefly is the economic purpose behind the bill. That seems to me to carry out what I believe to be the economic theory, if there is one theory behind the "new deal." As you know it was expressed in the preamble of the N. I. R. A. by stating that the act was to remove obstacles to the free flow of interstate and foreign commerce; to induce and maintain united action of labor and management under adequate Government sanctions and supervision and this particularly I stress—to increase the consumption of industrial and agricultural products by increasing purchasing power.

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To those of you who have read the very recent late report of the Division of Research of the National Recovery Administration the impressive thing is that during the last 2 years the hourly wages, particularly among the unskilled, and by hourly wages, of course, I mean what the dollar will buy in terms of goods and not merely the increase in the actual wage, has remained about the same. There is no doubt that profits are substantially increasing. It was interesting to note on the 16th of this month that the income tax had increased 29 percent over last year. That is a significant fact. It is also significant that the earners share in any dollar as against profit, overhead, and cost has steadily been decreasing since 1849. In that year it was 51 percent. In 1933, it was 36 percent.

I take it therefore that we have a process in which the basic consumer market, the great market, is substantially shrinking so that the pyramid on which production rests is growing less at the base while wealth is concentrated at the top.

It is interesting to note, for instance, that pay rolls in December 1934 were 60 percent of the total pay rolls in 1926, whereas dividends and interest in 1934, not a year taken to have any very marked profit, were 150 percent of the same figure in 1926.

I believe that the method of collective bargaining, therefore, will carry on and attempt to spread purchasing power and stop this continually shrinking and shriveling process that is going on today. Why do I think that? I think it is obvious that where labor is a party to and can bargain collectively, and with power behind the bargaining, that there is a greater chance for high wages; otherwise there would be no attempt to resist the burden by the employers. The real reason the employer resists this bill is because the employer knows it will increase purchasing power.

Mr. EAGLE. That is axiomatic.

Mr. BIDDLE. Yes; that is axiomatic, it seems to me. Now, then, what is the theory of collective bargaining? It is not a new theory, contrary to many statements—Samuel Gompers said before the Industrial Conference in Washington at the close of the Great War, and the words are interesting because they are so close to the words used in this bill:

> Under the law a wage earner can work without discrimination, can bargain collectively, can be represented by representatives of their own choosing in negotiations and adjustments with employers in respect to wages, hours of labor, and conditions of employment

is summarized. That was the idea after the Great War; and side by side with that I am going to quote from Mr. Louis E. Pearson, who was president of the United States Chamber of Commerce, I think, in 1929, who said—this is significant language:

> The day is not far distant when organized business, organized labor, and the comprehended Government will unite for the intelligent teamwork which alone can solve our problems.

Now, teamwork, or partnership, as it is often called, results from a fair contract made under fair conditions; and you talk about freedom of contract of a man dealing with the Steel Corporation where he can take it or leave it with 2,000 men waiting at the door—such a partnership is absurd. In regard to a partnership, it must be where there is fairness after the agreement has been consummated

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and after the two sides are evenly balanced to the extent where an hourly contract can be written, and not before.

I would like to say a word about "majority rule", about which there has been so much hubbub. Majority rule seems not to be theoretical but a practical thing, and it is based on length of time, practice, and tradition in plant management, and it is written into other laws as well as this one. It means, of course, that where a majority of the employees elected a unit or units to represent them that they should represent all of the employees. To those familiar with collective-bargaining agreements it is axiomatic to say that any trade agreement is made for the benefit of the men in the plant. It is not made for the benefit of the members of the union. It is made for the benefit of the plant, and cases are always recognized that benefits—the courts have always recognized it. The majority rule was written into the Railroad Act which was passed almost the same day as Public Resolution No. 44 under which our Board was appointed, was adopted, and for 8 years had been an administrative rule of the National Mediation Board among railroads before.

The practical side of majority rule is that neither can an employer deal with any chance of success with a group of representatives nor can any union stand any chance of success if there are other competing unions in the field. It is absurd to talk about trying to enter into a collective agreement with half a dozen people with divergent views and different points of view in the field; and, just as the employer has the unity and power of the individual, so labor should have the unity and power of the single representation. So much for majority rule.

Now, who is to determine the unit in which the majority should govern? That seems to me to be well handled in this bill which provides that the board or whatever commission is created by the bill should determine that an agency, as an employer could determine under the law what the unit was, without frustrating the whole purposes of the bill. So there is another impression but would say that any group of three-fourths of the men should be the unit, you would also frustrate the purpose of the bill and although it does put great power into the hands of the board controlling that power it is subject to review by the courts and it seems to me that is essential that it should remain in the board.

I would like to say one specific thing about the bill before I leave the subject of collective bargaining: That is the corresponding duty on the part of the employer to bargain collectively. Senator Wagner said at the Senate hearing, and may have said here that he felt that that was implied in the bill. I don't like legislation by implication. It seems to me that it would be sounder to express in this bill a clause specifically making it a duty on the part of the employer to bargain collectively. That is not here expressed.

I suggest to the committee and I think that the Senator has taken cordially to the suggestion that there be inserted as subdivision (5) of section 8 the following clause—section 8, you will remember, outlines what shall constitute unfair labor practices. It specifies that—

It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7—

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And so on, and the last subdivision of that section provides that you must not discharge or discriminate against an employee who has filed charges or given testimony. Now, there at that period I would add the following as subdivision (5):

To refuse to bargain collectively with the representative of his employees subject to the provisions of 9 (a)

and section 9 (a) is the section defining majority rule, that the specific matters are that it is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of the majority, and as I have said, I think it is dangerous to imply anything in a bill. As you gentlemen know, labor laws are not popular with the courts and are narrowly construed, and I think it would be taking a chance if the bill means that, which I take it it does, to omit it from an expressed statement.

I should like to say a word about the enforcement measures of this bill. They follow the practice of the Federal Trade Commission, roughly of the Interstate Commerce Commission, and of most Federal administrative bodies. I look upon this board, that is, this contemplated board, not as a legalistic court functioning in the philosophy of law but as an active, technically trained, understanding board administering these things, in passing on them in the sense that a court passes in law, but actually administering them. If that is true, I believe, that this practice is well also for such purpose. It is the practice of certifying the record and if there is no compliance filed in court with cease and desist order, and the order is made reviewable as in all other administrative tribunals only as the facts do not sustain the findings.

Now, what is our present practice for the purpose of comparison? A case goes to the national board. There is noncompliance. It comes to our board. A few hundred pages of testimony are taken. We enter a compliance under the findings, ordering the man reinstated and then if there is no compliance it goes to the Attorney General for enforcement, but that is merely a suggestion to the Attorney General, that has no force of any kind and in order to enforce the act he must try the case de novo and start the case all over again. Meanwhile your man is out of a job. It seems to me essential that speed and simplicity should be effected in this practice. I would like to say, and I have stressed it a good deal before talking about the actual break-down of the enforcement of the law. That has been going on for some time and we know since the appointment of the old Wagner Board, which, as I remember, was in August 1933, and the appointment of our board, which was in July of 1934, one case has been tried—the *Wierton case*, and in one other case only, in the *Houde case* that of the Houde Engineering organization case, has any actual step been taken to enforce the law.

Let me stress as I have before that I am not criticizing the Attorney General. The records come up from our board, which has no power of subpena, no power of enforcement of any kind, and therefore it lands in the hands of the Attorney General and it must be made a new case; and again, the delay, I think, is a very serious thing.

To say a word about the actual figures showing the delay in the lack of enforcement, we have had 111 cases up to March 2 before

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our board; that is, before the National Board. Now, it is true that those 111 cases are a small fraction of the cases filed in the regional boards. They got over 5,000, and the regional boards have been extraordinarily successful—there are 17 of them with 24 officers—in settling these cases. But once the employer knows that the power of enforcement is not behind this sentiment would disappear. You have going through the law the same thing that happened in prohibition. In the early days there was some measure of enforcement, but when people realized that it could not be enforced the thing went to pieces entirely. Now, of that 111 cases, violations were found in 86. In 34 cases restitution was made. In 52 cases there was noncompliance and 30 were referred to the Department. I have already mentioned that two cases have been started. Several have been referred to the district attorney, but so far no true bills have been found nor has any case gone before the grand jury.

In the *Weirton case* the violation was in the summer or fall of 1933, and you know the *Weirton case*. In the *Houde case* it was the latter part of 1933, and the Board found the violation in August 1934. The bill has been filed, the bill has been amended, and the case, I say, has been tried. Those are simply instances of the situation. In closing, I want to confine my remarks, in accordance with the chairman's suggestion, and what I now say can be said in a very few words.

I should like to stress a matter largely in dispute before the central committee, and that is the independence of the Board. Your bill, gentlemen, makes the Board completely independent. It has been suggested that the Board should be put in the Department of Labor. Now, I believe that this technique may eventually evolve a series of labor courts through which it will be peacefully handled, but I am convinced that that evolution will not come if the Board starts as an adjunct of labor. After all, the Secretary represents labor, and I think, with all due respect to the Secretary, it seems to me that the Board functioning in her Department with the personnel under her would necessarily create, at least in the minds of the employers, that that Board could not be impartial and could not have the status of an independent tribunal. I know that there is really difference of opinion in this matter, and it seems to me that those who argue that it should be in the Department argue from a less sound premise which is that the Government is continually expanding and that responsibility should be centered; that we should have less outlying boards and bureaus. I believe that to be unsound, because I think even today the heads of the Cabinet offices are little able to get along in any detail with the enormous tasks that they already have, and it would be simply placing an additional burden on the Secretary for no wise reason.

I might say that Mr. Lloyd Garrison, the former Chairman of the Board, and my two colleagues, completely share this view and feel very strongly about it. I feel particularly strong about it, because, after all, this is the Board to protect labor. It is a board which will be considered a labor board anyway. Therefore, let us give it all the independence we can.

May I say one more thing in closing, and that is this: The critics of this bill, will, when they appear next week or 2 weeks from now, say that it is, of course, aiding and protecting labor without protect-

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ing the employers; that labor unions should be given some sort of obligation under this bill, and to suggest a clause that no one—they will state—interfere with their organizations. That is apart from the question. It means that no employee should interfere with the organization of a labor organization; and with my knowledge of the courts and labor laws, that phrase will be used as the basis of continual injunctions, and will do more to take the teeth out of this bill than anything I can think of. There is ample law in every State to protect the organization of labor unions from violence and threats of violence, and dozens of injunctions a day are being issued for that purpose. I think there is no place for it in this bill. However, if the employers would like a clause right in the bill, I suggest that it might be stated that no employee should interfere with the right of his employer to join the National Manufacturers Association or any other group of manufacturers. That would be a corresponding right.

The CHAIRMAN. Mr. Biddle, you can put any statement in the record you want. You can draw up a brief for us, or if you want to extend your remarks you can send it to me, and we will put it in the record. I hope the committee will make their questions brief in justice to the witness that will follow you. Mr. Ramspeck, do you desire to ask any questions?

Mr. RAMSPECK. Mr. Biddle, I am very much interested in your statement, in the matter you first discussed. What would you say to the sort of a situation which applies to the governmental union and therefore would not come under this bill, and the same principle might apply outside. For example, the letter-carriers' union in the Government have declined to permit into their organization the special-delivery carriers. The latter have no recourse. The American Federation of Labor won't give them a charter. They cannot get into the letter-carriers' union and therefore they are forced to exist outside as a nonaffiliated union. I have another illustration down in my own district where the letter carriers organization have blackballed 44 letter carriers and they cannot get in the union. What recourse have employees got in a situation of that sort under this bill, if such a situation existed in private employment?

Mr. BIDDLE. My answer would be that they have no recourse under the bill, and I think the point is well taken, but not in regard to this bill. This bill does not attempt to control labor unions, their jurisdiction, their fees, or their activities. I think that such legislation might some day be wise, but it could only be drawn as a result of more careful study. Labor jurisdictional matters, as you know, sir, are not an easy thing to handle. I think that undoubtedly some of the unions are grossly unfair in their treatment of their own members, but that seems to me a consideration which I profoundly believe would be unwise to take in this bill.

Mr. RAMSPECK. But the latter proposal which you gave the representation in collective bargaining to the majority rule. Now, if the union that has jurisdiction in a particular place declines to let into its organization such an employee then they get no representation at all.

Mr. BIDDLE. Well, if they wish to form their own union they do not have to get a charter from the American Federation of

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Labor. That union, of course, would be recognized under the bill. I was thinking that your question was leveled at the unfairness of the Federal unions in not permitting them to have a charter. Under this bill they clearly could organize their own union and that would be, of course, recognized.

Mr. RAMSPECK. Then the provisions as to majority rule in this bill would not exclude the minority if they did not belong to the organization.

Mr. BIDDLE. No; without trying to prophesy, it seems obvious that the board would recognize that group as a unit because they could not belong to any other unit. In other words, the unit does not necessarily mean the industry or the business. It may be a group within the industry, that really are a craft that have been treated as such.

Mr. RAMSPECK. Just one other question. From your experience, Mr. Biddle, in this labor-dispute question, have you reached the conclusion that the time has come when the Government must as a necessary part of its service to the general welfare take charge of the settlement of labor disputes or provide a method for doing it?

Mr. BIDDLE. I would say "yes" if you say "provide a method." It seems to me that our experience shows that once you create the mechanism to which these disputes can be brought, in 9 cases out of 10 you can make a settlement, if you sustain the 9 cases out of 10 by the fear of enforcement underlying the situation. I think labor will be in a chaotic condition unless some means is given through which they can express their very real complaints.

Mr. RAMSPECK. That is all.

The CHAIRMAN. Mr. Dunn of Mississippi.

Mr. DUNN of Mississippi. I want to ask only one question with respect to what Mr. Ramspeck said. Of course, I do not know all the features on which his question was predicated. I notice here on page 2 in the definition (2) it says:

> The term "employer" includes any person attending to the interest of an employer, directly or indirectly, but shall not include the United States, or any States or political subdivision thereof.

I ask this question as a matter of information. In reference to these special delivery carriers about whom he spoke, and have no affiliation with the other organizations within the Department. Now, coming back to the purposes of collective bargaining under this bill, as a matter of fact they could get no relief directly in that their employer is the United Government?

Mr. BIDDLE. That is true; I was taking it as a theoretical question. They would of course have no relief here. I suppose Mr. Connery in drawing the bill thought it wise to exclude Government employees as that is suggesting a debatable question and he did not want to overload the bill.

The CHAIRMAN. We thought that Mr. Ramspect's committee will have to take care of that eventually.

Mr. RAMSPECK. I was not objecting to that feature of the bill. I think the States and the Government should be excluded.

The CHAIRMAN. And I felt it would be a very good example to the Government and very unselfish.

Mr. Hartley, do you wish to ask any questions?

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Mr. HARTLEY. I have no questions.

The CHAIRMAN. Mr. Lesinski, do you wish to ask any questions?

Mr. LESINSKI. Mr. Biddle, are you acquainted with the automotive report, of the automotive engineers?

Mr. BIDDLE. Yes; I have read it.

Mr. LESINSKI. Can you make a statement on that?

Mr. BIDDLE. I am not prepared. I suppose a good many of us have read it. It was a Government report made to the President, I presume for the purpose of discovering what steps in the automotive industry should be taken, if any, to improve labor conditions. The report indicated, as it has been evidenced in the press, the New York Times carried a full page on it—very great espionage all through the automobile fields. That was the thing with respect to labor that struck me most in the report. I would not want to comment in detail on it now.

Mr. LESINSKI. I happened to be in the hearing in Detroit when Mr. Henderson, who conducted these hearings, laid down a set of rules that no employee can talk about section 7 (a) nor anything about the employment excepting that he could tell his own story about himself. I thought that was unfair for Mr. Henderson, and yet he makes a complete report in behalf of the labor. I happen to have a front page of one of the Detroit papers dated February 24 where Mr. Knudsen, executive vice president of General Motors Corporation and chairman of the manufacturers committee of the Automobile Manufacturers Association, makes a statement that the report of Mr. Henderson is absolutely unfair to the automotive industry and he continues with a statement that the automotive industry does not discriminate against seniority rights of a man above 40 years of age. You will find in that testimony there is more discrimination in the automotive industry against people above 40 years of age than anywhere else, and yet Mr. Knudsen denies it and claims that there are 90,000 people above 40 years of age working in their plants, and I am telling you this because someone is wrong in the testimony.

Mr. BIDDLE. I might call the attention of Mr. Lesinski to the fact that there is an admirable debate between Mr. Leo Wolman and "Bill" Leiserson in this week's Nation as to the method of proportional representation in the automobile field, which I think will pay to read.

Mr. LESINSKI. There is one thing that I wanted to bring up to the attention of this committee that is probably of great interest, and that is that we know in our territory that if a man is employed in one of the automotive industries and he either through his labor organization or any other type of organization in that plant is blackballed in that industry as a Communist or a red when he goes to another plant to apply for a job they will ask him where he worked. He will say he worked as such and such a plant. They will immediately communicate with the other plant and they receive the information that this man is a labor agitator or a Communist and he never will get a job in Detroit. That is happening and that is something that most people do not know. They call that service the "welfare department" or the "service department", but it is nothing but a real, high-class detective bureau. That is all they are.

The CHAIRMAN. Mr. Wood.

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Mr. Wood. Mr. Biddle, in view of the fact that the National Recovery Act has made it almost mandatory for the employers to become identified with their trade associations and likewise the N. I. R. A. leaves the decision of each trade association on the question of codes and practices practically mandatory upon all employers whether they belong to the trade association or not, the law has enabled the employers to organize almost 100 percent in the trade associations, or employers' unions. In other words, the law made it practically mandatory to identify himself with his organization. So there is not any good reason why labor should be proscribed in the labor organizations. And so it does seem that labor should have the right, at least, the free and untrammeled right to identify themselves with an organization of their kind.

Mr. Biddle. I think that is a very good point, Mr. Wood, to make, that if it should be barred, it should be barred on both sides, and may I refer you to the platform of the National Manufacturers Association. I wish I had it before me; but the section dealing with the question of minority and majority representation in labor said it is outrageous not to permit the minority to be represented even where the majority has been established, and when you turn a little further on it tells how to do it, but suggests that where in any particular industry the majority have found certain things essential for the industry that the minority must be bound. I point that out to you.

Mr. Wood. According to whose ox is being gored.

Mr. Biddle. Exactly; and let me say, in passing, about company unions, that the subject of most interest in this is not so much the outlawing of the company unions as it is to make the public realize that the company union is not calculated by its very essence to be a union which can make a collective agreement. It has not the expert thought and independence of a Federal (?) union. The union dealing with the employer on those terms, as Mr. Garrison said, it is all very well for picnics, but when it comes to be a question of wages and hours the company union cannot stand up to the employer, because if it tries to, its representatives of labor are destroyed. That in a nutshell is the reason why company unions cannot bargain collectively.

There is so much to be said about employers' organizations, about labor being free, unhampered, just like your brothers in the labor union, when from their actual present and past activity, I will say that it seems that they are not interested in labor's right of joining—that is, joining any organization of their own which are the things that they want to prevent labor from joining. They want to prevent labor from joining any organization that might be of some assistance to labor. Now, for instance, in regard to the mail carriers' organization just suggested by Mr. Ramspeck, we have three organizations of letter carriers now. We have the city letter carriers, of course; then we have two rural letter-carrier organizations, and possibly one or two more. Then I believe the clerks have a union.

Mr. Wood. But these are just the letter carriers themselves who are excepted. And I have never heard of any letter carrier who wanted to join either one of those three, or said that he was deprived of that right. The letter carrier has had a very hard struggle in

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organization and of course it goes without saying that all employees organizations, that is, Government employee organizations, about the first passage in the preamble to their constitution there is a statement that says that they will not engage in the cessation of work, in strikes. There never has been but one strike that I know of of any proportions.

(At this point a discussion was had which, by the request of the chairman, was not recorded.)

Mr. WOOD. And there was the policemen's strike in Boston and we all know about the terms of that strike.

(Discussion off the record.)

Mr. WOOD. So the real purpose of this legislation is not to force any man to join an organization but for the purpose of giving employees the right to identify themselves with their fellow workers in their craft and calling.

Mr. BIDDLE. I believe that firmly.

Mr. WOOD. And we certainly want to give them the right because we have made it almost mandatory on the part of the manufacturers to join the trade association, and he has no choice, by nonrepresentation they must then agree to abide by rules and regulations of that organization. In view of the fact that it is understood by the employer and we know that trade associations are representing those who are members and those who are nonmembers for their benefit just as the trade union in plants where they may have a majority representation, whatever legislation we may secure for the benefit of their organization, and individual members naturally spread to the members of the entire plant. Therefore, whatever a trade union secures in the way of increase in wages or hours of work conditions those who refuse to identify themselves with the organization are recipients of that benefit.

Mr. BIDDLE. Yes.

Mr. WOOD. And therefore they should be at least as is the case with the trade association, they should acquiesce in the conditions that have been secured by the organization.

Mr. BIDDLE. May I say in that connection that Mercier Cook, who I suppose is the best-known management expert in the United States today, said in 1929:

> Shop organization without national affiliations leave the organized workers without the resources, financial, technical, political, which they require to secure only that recognition which the best interests of their industrial system demand.

I think that gives exactly what you were saying.

The CHAIRMAN. Mr. Truax, do you have any questions?

Mr. TRUAX. I have no questions.

The CHAIRMAN. Mr. Marcantonio.

Mr. MARCANTONIO. I have no questions.

The CHAIRMAN. Mr. Eagle.

Mr. EAGLE. I do not desire to ask any questions.

The CHAIRMAN. Mr. Dunn of Pennsylvania.

Mr. DUNN. No questions.

The CHAIRMAN. Mr. Schneider of Wisconsin.

Mr. SCHNEIDER. Mr. Biddle, if the N. R. A. is to continue, 7 (a) is to come out of it?

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Mr. BIDDLE. I hope so.

Mr. SCHNEIDER. This will be separate and distinct?

Mr. BIDDLE. I trust so.

Mr. SCHNEIDER. Our colleague cited the conditions in the automotive industry in Detroit and says that the employers have elaborate spying systems which they use to advantage in regard to the right of collective bargaining, or the right of the workers to join the union in Detroit. Now, in connection with this bill here, if it went into effect, just how is the employer precluded and prevented from defeating the purposes of this act?

Mr. BIDDLE. I do not think that the act deals with that specifically. I suppose inferentially that the use of spies in unions would certainly be taken as evidence of interference, excluded by the act. Wouldn't you say that, Congressman?

Mr. LESINSKI. Yes; I think so.

Mr. BIDDLE. And I think it would definitely cover it.

Mr. SCHNEIDER. But that might be difficult to do, particularly in certain communities and certain States where the employers are particularly strong and economically powerful.

Mr. BIDDLE. That is true, excepting the broad subpena powers given the board, I believe, would permit them to go into a great deal of espionage, which they could get under oath in any particular case.

Mr. SCHNEIDER. Yes; under oath they could get it, and yet under all the circumstances it might be well to have some genuine legislation here in connection with this or in the State laws.

Mr. BIDDLE. May I say that the Twentieth Century Foundation (?), which you know has made a report on labor relations, and the report follows—its recommendations follow the Wagner-Connery bill very closely, as suggesting that espionage and racketeering should be the subject of a detailed and careful research, and that Congress should appropriate money for that purpose. That seems to me to be in a rather separate field and not properly to belong to this act.

The CHAIRMAN. No; it is not our bill.

Mr. DUNN of Pennsylvania. Mr. Biddle, are you representing the Labor Department?

Mr. BIDDLE. No, Mr. Dunn; I am chairman of the National Labor Relations Board.

Mr. DUNN of Pennsylvania. Is that affiliated with the Labor Department?

Mr. BIDDLE. It is not affiliated with the Labor Department, except that the Executive order and resolution under which it is appointed provides that it will work in connection with the Labor Department. We have worked in complete cooperation with the Labor Department. They have helped us in every case where we have asked them to in connection with mediation and strikes. Mediation is entirely within the Department, except that violations of section (a) sometimes lead to strikes, and in that way we get into strikes but always with their cooperation.

Mr. DUNN of Pennsylvania. Do you believe that this law being enacted would do a great deal of good for the people?

Mr. BIDDLE. I do most sincerely and most enthusiastically.

Mr. DUNN of Pennsylvania. One more question, and if you do not want to answer it and have it go in the record you may exclude it.

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Do you know what Madam Perkins' attitude is in regard to this bill?

Mr. BIDDLE. I do.

Mr. DUNN of Pennsylvania. What is it?

Mr. BIDDLE. Her attitude, as evidenced before the Senate committee, is this—I think I spoke of this before you came in—it is that this board should be within the Labor Department and that its appointments should be subject to the approval of the Secretary of Labor. I disagree with that, as I have said already. It seems to me that the board should be independent, if it is to have the respect due a labor board from both the employees and the employers.

Mr. DUNN of Pennsylvania. One more question. If we can enact into law Mr. Connery's bill, H. R. 6288, would it be necessary to have a multiplicity of codes now existing in the United States?

Mr. BIDDLE. This is a little hard for me to say, because so many economic questions are involved with which I am not familiar and which I do not pretend to be familiar with. All those are involved. I think this can be said, that collective bargaining, as manifested by this act, will probably establish a more appropriate way of fixing wages than the rigidity of a Government-imposed code. Does that answer your question?

Mr. DUNN of Pennsylvania. Yes, sir.

The CHAIRMAN. Mr. Hartley, do you wish to ask any questions?

Mr. HARTLEY. Yes. Are you familiar with the strike of the newspapermen on the Newark Ledger?

Mr. BIDDLE. I am somewhat, as I have read about it in the newspapers.

Mr. HARTLEY. Do you believe if this bill had become the law of the land that that strike would have been settled before this and the newspapermen been given a square deal? If you don't want to answer, I don't mind.

Mr. BIDDLE. It is very hard to say it would have prevented the strike. I should think any machinery adequate for dispute would give a much greater opportunity to settle it than if there is no machinery.

Mr. HARTLEY. As you know, the men were dropped for having joined a newspapermen's guild. If this was the law of the land, they could not have been dropped for that reason.

Mr. BIDDLE. That is true, for we would have ordered reinstatements.

The CHAIRMAN. Mr. Biddle, this Wagner-Connery bill was up the last session of Congress and finally, as a result of the hearings, they brought out the National Labor Relations Board. They brought out the bill providing for the National Labor Relations Board. Under the provisions of the bill your Board was set up.

Mr. BIDDLE. You mean the resolution before——

The CHAIRMAN (interposing). Yes. This was set up, and in fact it was a compromise to give something to labor in the last days of the session.

Mr. BIDDLE. Yes.

The CHAIRMAN. Under the resolution and subsequently you were told to go out and settle labor disputes and your board has gone out and tried in every possible manner to settle disputes, but when you come up on final analysis of it you are up against the lack of enforcement.

Mr. BIDDLE. That is absolutely true.

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The CHAIRMAN. To my mind, your board has been the only Government board that has been really fair to labor. I mean by that that you tried to settle these strikes and do justice to labor and the employers at the same time, and yet when to a consideration of 7(a) you have the Richberg interpretation of 7(a) which, to my mind, has been responsible for all the strikes in the automotive industry since last March and the purpose of this bill now is to give your board power when the employers say, "We won't stand for that decision", then this bill makes them stand for it and gives redress to the workers.

I was interested. Of course, I called attention time and time again. I do not understand why this thing could be, but the Supreme Court of the United States in many cases, if a case is brought in connection to some law, the Supreme Court will look at the law and say, "What was said in Congress on the bill?" They may not make that a vital part in the determination of their decision, but they look into it as to what was the intent of Congress. When Congress passed the N. R. A. an amendment was suggested in the Senate to legalize company unions under the N. R. A. and Senator Wagner, Senator Wheeler, and I think Senator Hatfield of West Virginia opposed that amendment on the floor of the Senate, and each of them said that the purpose of the N. R. A. was to outlaw company unions in 7(a). And yet after the law was enacted and I asked when the bill came from the Senate, I asked Mr. Robinson, of Arkansas, "Does this outlaw company unions?" And he said, "Yes." And when the automobile situation came up last March the interpretation put upon 7(a) was that they did not have to outlaw company unions and they could deal with company unions which under section 7(a) were legal. What is your reaction to it?

Mr. BIDDLE. My view is that company unions are not illegal under the present law and under the Wagner bill and section 7 (a), the Wagner bill attempts to make company-controlled unions illegal. There is a difference. Occasionally there is a genuine company union. I think it is rather rare, however, but it does exist. It may exist for purposes not connected with collective bargaining, as for instance they have held elections where the men at an honest election have voted for company unions and we will recognize them. The union may have to do with athletic questions, questions of insurance, and matters of that sort that seem to me to belong in those fields. Of course, the company union is a very loose variety. The average attempt by an employer to dominate his union is through the employees' representation plan which is not a union but which permits the company to suggest their purposes better where the management of the company, or the employers and employees sit together and settle disputes.

The CHAIRMAN. If this bill becomes a law, which I hope it will, because I think we are convinced that something must be done to save industrial strife, bloodshed, and real labor strife all over the country. Personally, I hope that this board, that the members of your board will stay and function, now that you will have more power, and I predicate that upon the past decisions of the board. You have been very fair to labor.

Mr. BIDDLE. I appreciate that.

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The CHAIRMAN. If there are no further questions we can perhaps go to the next witness.

Mr. SCHNEIDER. On the question of company unions, it might properly develop that they were organized not for the purpose of collective bargaining. Could the board recognize them for that purpose?

Mr. BIDDLE. No. The board—I suppose I should use the term "recognition" in the sense of stating that the board would not outlaw them if the question came up.

Mr. SCHNEIDER. If a company wanted to use it for collective bargaining in a pinch and have their representatives sitting on both sides of the table, of course, the board would not recognize it?

Mr. BIDDLE. They would not recognize it if the company had been guilty of any acts defined as unfair labor practices under the bill.

Mr. SCHNEIDER. Well, the company union can be organized in such a way as to keep the men pretty well within the union and by hook or crook keep them out of any legitimate collective-bargaining organization. Therefore, the workers have no organization. The company, if they got in a pinch, could use that organization for that purpose.

Mr. BIDDLE. Well, you really ask me if the bill outlaws company unions. It does not; there is nothing in this bill which outlaws company unions.

Mr. SCHNEIDER. You are speaking, however, of unions that are not collective bargaining?

Mr. BIDDLE. No; I am not, sir. I am speaking of any company union. There is nothing in this bill which makes company unions illegal whether for the purposes of collective bargaining or otherwise, but I think you will find if the men have a chance to have their way there will not be any collective-bargaining company unions. They will disappear under the bill.

Mr. SCHNEIDER. I am glad you explained that. We feel that any time the workers in any plant have an Australian ballot, and have an opportunity to vote for what we call a legitimate union as against a company union they will choose the legitimate union every time.

Mr. BIDDLE. I think so, but I do not know whether the Government can say, "You cannot have this kind of a union."

The CHAIRMAN. Thank you very much. I would like to have you, if you will, put in a statement. I mean, as I said before, a brief, or anything in the way of a statement that will be extremely valuable to the committee when it comes to the consideration of the bill.

We will now hear from Mr. Ernest C. Smith, representing the cigar workers of the Twenty-first Congressional District of Pennsylvania. Congressman Haines will introduce the witness.

STATEMENT OF HON. HARRY L. HAINES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. HAINES. Mr. Chairman, first of all, I want to express to you my cordial thanks and appreciation for your courtesy extended to me and my constituents this morning. On the 12th of March, I think it was, I had a letter from my people back in Pennsylvania concerning the problem which is of very vital interest to them, and

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that is the supplanting of human hands in the cigar-manufacturing industry by machinery.

As you doubtless know, I come from one of the largest cigar-manufacturing districts in our entire Nation. My own congressional district has more than 200 cigar manufacturers and they are faced with a terrible situation at this moment. The industry is being mechanized and about 60 percent of the workers are being displaced by these machines in my own particular community. In fact, my home town is one of the largest producing towns. The town was built up and it got to the place where an ex-Governor made the statement that it was the outstanding small town in Pennsylvania.

The CHAIRMAN. What is the same of the town?

Mr. HAINES. Red Lion. I might say that 93 percent of the people there own their own homes, and they are beautiful homes, with every modern convenience we have that you have in any city of the country. We have a fine citizenship. The people employed in the industry, which is mostly cigar manufacturing, are native-white Americans, good Scotch-Irish, and Pennsylvania German element. They are thrifty, frugal, and no finer citizens could be found anywhere; and, Mr. Chairman, today these men and women are walking the streets because the manufacturers have seen fit to install the machines.

These men that acquired all of their wealth through the toil of these people who have worked at the bench for them for many years, and when I received this letter telling me that they were circulating petitions which were being signed by lawyers, doctors, merchants, and workers—I think this petition bears the signatures of more than 6,000 people in that community—I did not know who to go to, to be very frank, and so I contacted you, and you told me to bring them down and you would give them the hearing, and that is my purpose in appearing here this morning with Mr. Smith, who is a cigarmaker who has worked at the bench all of his lifetime and he has a family to support. Mr. Smith will make no pretense of being a public speaker, but I want you to hear him, and it gives me pleasure to have Mr. Smith speak at this time.

STATEMENT OF ERNEST C. SMITH, REPRESENTING CIGARMAKERS OF YORK AND ADAMS COUNTIES, PA.

Mr. SMITH. Mr. Chairman and gentlemen of the committee, as Mr. Haines has stated, I am a cigarmaker. I have been for about 20 years or more perhaps, and we are fearing—that is, the people of our industry are fearing now—that our industry is going to become mechanized. In fact, there were some machines put into our industry by about seven or eight of the manufacturers and they are operating at the present time.

Now, I have here a few statements that I believe, with your permission, I could express myself more fully than I could, if I continue to speak extemporaneously. So, with your permission I would like to read these statements. [Reading:]

We, a committee representing the hand cigarmaking industry in York and Adams Counties and vicinity, desire to place in your hands, for earnest consideration, a petition expressing our views in reference to the cause of increasing unemployment and the menace to the continued manufacture of hand-made cigars in our industry.

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During the past year authorized surveys of production costs in our industry disclosed the fact that most of the manufacturers of the hand-made product were sustaining losses. Only a small percentage were able to operate on a meager profitable basis. This unfortunate condition has compelled some of the firms to resort to machine operation in an effort to keep in step with the machine-manufactured product on the market.

A differential in production costs in favor of the privileges of machine operation is mute evidence as to why cigarmaking machines are being introduced into our industry.

In some of the southern States large-machine-operated factories are privileged to operate three shifts per day. The second and third shifts yield a substantial reduction in production costs. The hand cigarmaking industry operates only 8 hours per day.

The alarming displacement of hand cigarmakers by the increasing growth of machine operation may be seen by comparing the following facts: Only two operators, girls, are employed on each machine. This unit, in operation, provides an average of 3,500 cigars each 8 hours.

To produce an equal amount by hand would require the services of 2 bunchmakers and 5 rollers, or a total of 7 persons would be employed. The displacement by the machine unit would be five persons.

Since the hand cigarmaking industry operates only 8 hours per day, a second shift by machine operation would replace seven persons. A similar amount would be replaced by a third shift. In summing up we find a total of 19 persons replaced by one machine unit operating three shifts per day.

Now, we know or have evidence that there are some of the larger factories, machine-operated factories, in the southern States operating three shifts a day. [Reading:]

The United States Tobacco Journal [Journal submitted as evidence] dated Saturday, March 9, 1935, illustrates the advantage of a three-shift-per-day operation of a mechanized factory producing mass production on a gigantic scale. This firm produced one-tenth of all the cigars manufactured in the United States in the month of January 1935.

The CHAIRMAN. Will you please read that again?

Mr. SMITH [reading]:

The United States Tobacco Journal [Journal submitted as evidence] dated Saturday, March 9, 1935, illustrates the advantage of a three-shift-per-day operation of a mechanized factory producing mass production on a gigantic scale. This firm produced one-tenth of all the cigars manufactured in the United States in the month of January 1935.

Mr. WOOD. That is the American Tobacco Co.

Mr. SMITH. That is John Swisser & Co., Jacksonville, Fla. [Reading:]

At present this firm is completing, or has completed facilities to practically double its capacity. Assuming this firm would employ the use of 400 machines for a three-shift operation, the replacement of human hands would be those of 7,600 persons.

Now, the reason why I inserted the "assuming" is due to the fact that the firm would use 400 machines. My reason for that was this: I had occasion to speak to a representative of the Swisser people and he told me that last summer that they had employed and had in operation 165 machines and had in the course of installation 49 more, which would mean a total of 214 machines, and if we can judge by their statement that they are preparing to double their capacity, this would more than bear out that contention. [Reading:]

These figures show that less than 10 mechanized factories of a similar capacity would replace every hand cigarmaker in the United States.

Hand cigar manufacturers, in the struggle against these odds, are being compelled to resort to machines, and as only girls are employed as operators, it may readily be seen that the heads of families must soon enters the ranks of the unemployed.

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Many of the communities in which the hand-made cigar factories are operating have no other industrial facilities into which our people, whose jobs are uncertain, might be absorbed. It may be truthfully said that the prosperity we of York County and vicinity enjoyed for many years until labor-displacement machinery was introduced into the cigar-making industry, was due to the fruits of our labor afforded by the hand cigar making industry.

During the past 8 months there have been, and are in the course of being installed, 108 labor displacing machines in the York County.

That is in the hand cigar-making industry.

Since each machine replaces 5 persons by 1 shift operation, the labor displacement of the 108 machines would be 540 persons. The operation of a second shift would replace 1,296 persons.

The mechanization of our industry would eliminate approximately 90 percent of the manufacturers from the field of cigar production.

By that I mean that there would be about 90 percent of these men that could not afford to operate by the machine method, that it would be too expensive for them.

Our factories and our homes would become almost valueless as a result of the loss of an adequate income. Our children, too, would have no future along the line of educational possibilities. Their talents and ambitions would have to lie dormant.

It is our firm conviction that the reduction of the wage scale was due to the replacement of human hands by the operation in many of the industries, of automatic machinery on a gigantic bases in all parts of our fair Nation.

In presenting this petition we are not unmindful of the grave national problems now facing us. We represent but a small industry; nevertheless, we feel that a cooperative effort such as we are representing will be of some value in the final analysis of the problems of the unemployed.

Representing a large portion of a congressional district in which the hand cigar making industry flourished for many years, we are greatly honored to join our voices with that of our beloved Congressman, the Honorable Harry L. Haines, whose foresightedness established him as a pioneer in the field of advocating the regulation of automatic machine operation in an effort to solve the grave problems of the unemployed. We are aware of his untiring efforts to find a solution of these problems for the people whom he represents, and for the entire Nation as well.

With this in mind, we feel it our duty to join with him in his views in reference to the regulation of automatic-machine operation in such instances where human hands are being eliminated, constituting a burden rather than a blessing to mankind.

We believe in the regulation of automatic operation to a point where the privilege of man to work and earn an adequate livelihood cannot be denied. We are hopeful that our efforts in this direction will add strength to the growing sentiment that such a measure would be the means of solving our national problems, and provide security against future recurrence of the grave crises we are now facing.

Furthermore, it is not with a selfish motive in mind that we are presenting this petition for your consideration, rather that we are confident that in lending our voices and our efforts to a movement which, should it be successfully consummated, will be the ultimate solution of most of our national problems.

The CHAIRMAN. Mr. Haines, have you any bill in reference to this?

Mr HAINES. I have no bill.

The CHAIRMAN. Well, Congressman Palmisano was in, and he has a bill for investigation by the Secretary of Labor of labor-saving devices, and to report back to Congress what means should be taken. It seems to me, if I remember rightly, that the Secretary of Labor some 2 or 3 years ago came out with some sort of proposition favoring a tax on machinery, and I just want to interpolate at this point that I think it might be a good thing for a little later. I doubt if we could get a bill through Congress to tax machinery in this

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session, but I do not think it would do a bit of harm to have the proposition that Mr. Palmisano suggests put through in any bill next session of Congress, and the Secretary could suggest legislation along the line of taxing machinery, or doing something to remedy the situation.

Mr. EAGLE. What is Mr. Smith's suggestion? How can that terrible situation be corrected, so that worthy American men can keep on working instead of being put into the ranks of the unemployed? What is your suggestion?

Mr. SMITH. Well, it is our belief that most of the damage done to our hand cigar-making industry by machine operation is by the large factories that are permitted to operate three shifts a day.

The CHAIRMAN. What is your remedy?

Mr. SMITH. To regulate that machine.

Mr. EAGLE. Is there any possible way in America to prevent a man from working either himself or those he employs in three 8-hour shifts if he wants to; is there any way that we can stop him?

Mr. SMITH. To my mind, that I cannot answer.

Mr. EAGLE. I am so sympathetic with you and your people, but I want to get your view, the practical aspect of it. It is one thing to call our attention to a situation, but instead of leaving it exclusively to our ingenuity to devise a means out of the fog, help us by suggesting something.

Mr. SMITH. This is my opinion: Since the hand cigar-making industry cannot properly operate more than 8 hours a day—that is due to the fact that I do not think that if all the cigars were made by hand, that I do not think we could get enough cigarmakers to make them all, but since they work three shifts and that we under present conditions can operate only 8 hours a day, I believe it would help materially if you would restrict operation of the machines to 8 hours a day. That would necessarily give us relief.

Mr. SCHNEIDER. Now, just how do you reason that out?

Mr. SMITH. Pardon me.

Mr. SCHNEIDER. How do you arrive at that conclusion, that this limitation of the operation of the machinery from 3 shifts to 1 shift would provide more employment for cigar makers than at present?

Mr. SMITH. It would necessarily mean that these manufacturers on a large scale, these large machine operators, would have to provide facilities, additional machines for the continued operation of all their people.

Mr. SCHNEIDER. But would they give employment for their cigarmakers under those circumstances?

Mr. SMITH. Yes; there would be more employment.

Mr. SCHNEIDER. How?

Mr. SMITH. It would necessarily mean a change in the marketing conditions because we believe that the machine—in fact, we have figures to show that the machine has an advantage in the second shift operation of about 22 cents per thousand.

Mr. SCHNEIDER. In other words, the continuous operation reduces the overhead cost of the operation in the fact that 1 set of machines does the work of 3 of them and cuts overhead expense; but is that not in the interests of ecoromy of lower costs of production?

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Mr. SMITH. It would necessarily be, but at the same time it means the displacement of our people, of the hand cigarmakers.

Mr. SCHNEIDER. But that you conclude that if 2 more sets of machines were used and only run 1 shift that that would practically mean the employment of more people?

Mr. SMITH. If you had two machines it would not be as terrible, but the expense would be much greater and we would have much better chance to employ our people in the hand industry.

Mr. SCHNEIDER. In other words, if they were working 1 machine 3 shifts, and they had to put on 2 other machines and work the 3 only 1 shift, their expenses would be so large that they could make little profit and you and the rest of the hand cigarmakers would fare a little better?

Mr. SMITH. That would be part of the problem.

Mr. SCHNEIDER. Is it not true that these machines have been used for manufacturing cigars for a long line; for years machines have been used in the manufacture of cigars?

Mr. SMITH. Yes.

Mr. SCHNEIDER. But there are new improvements, is that it?

Mr. SMITH. They are speeding up; yes.

Mr. SCHNEIDER. You are a cigarmaker yourself?

Mr. SMITH. I am a cigarmaker and have been for about 20 years.

Mr. SCHNEIDER. Are the people you are speaking for members of unions?

Mr. SMITH. Some of them, on a small basis.

Mr. SCHNEIDER. Have they ever resisted in unison these conditions which are imposed upon them?

Mr. SMITH. Yes, sir.

Mr. SCHNEIDER. How much wages do you get on an average?

Mr. SMITH. As I stated in my statement, there have been surveys made as a result of that action and as I stated the facts in those statements, it has been found that the manufacturers have been operating largely at a loss due to the advantage of the machine-made product in the market.

Mr. EAGLE. That is to say, those manufacturers using hand labor have been operating recently at a loss?

Mr. SMITH. Yes; they have.

Mr. EAGLE. Due to the fact that it costs them more per unit to make?

Mr. SMITH. Overhead.

Mr. EAGLE. Than their competitors who used machinery?

Mr. SMITH. Yes, sir.

Mr. EAGLE. Go ahead, Mr. Schneider.

Mr. SCHNEIDER. Now, you say one company practically controls all those machine-made cigars in your community—the American Tobacco Co., is it?

Mr. SMITH. I think it is; yes.

Mr. HAINES. Will you pardon me? The American Cigar Co. is not operating in my district. The manufacturers in my district are privately owned, independent cigar manufacturers, and they are faced with this proposition now of being forced to compete with the manufacturers of machine-made cigars. The machine has so many advantages of cost over their hand production that it is displacing them in an unfair manner.

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Mr. SCHNEIDER. But the machine operation is controlled by big corporations?

Mr. HAINES. The American Cigar Co. has more or less of a monopoly in that it has received a royalty amounting to $5,000,000 to $6,000,000 a year on machines placed out on a royalty basis.

Mr. SCHNEIDER. Is there anything in the code about the restriction of operation, not permitting continuous operation and the installation of machines for increasing production?

Mr. SMITH. Not to my knowledge.

Mr. WOOD. No.

Mr. HAINES. Mr. Schneider, the code was written by the machine group.

Mr. SCHNEIDER. I was coming to that point, that the monopoly in your industry wrote the code.

Mr. HAINES. Yes, sir.

Mr. SCHNEIDER. And when they got the small fellows all tied up they proceeded to put in the machines to put the little fellows out of business?

Mr. SMITH. That is our position. That is our feeling among our people.

Mr. HAINES. Unfortunately, Mr. Schneider, the small manufacturer cannot install machines. He is not able financially to do it. There are more than 5,000 cigar manufacturers in the United States who are directly affected by the use of the machines out of a total of 5,500 manufacturers.

Mr. SCHNEIDER. You say manufacturers?

Mr. HAINES. Yes; manufacturers.

The CHAIRMAN. Mr. Hartley, do you have any questions?

Mr. HARTLEY. I have no questions.

Mr. WOOD. Do you operate any automatic machines there?

Mr. SMITH. There are about 7 or 8 factories that are introducing them, having from 4 to 24 machines.

Mr. WOOD. What type of machine do they use?

Mr. SMITH. It is the—I cannot tell you the name of it, but it is what they call—some call it the semiautomatic. I think it is automatic. It is the bunch-breaker type with the drum and then the bunch breaker takes the bunch and transfers it into the drum and it is rolled by the automatic-rolling device.

Mr. WOOD. What do you think will happen to the hand worker when they get those machines in operation all over the country?

Mr. SMITH. They will be out.

Mr. WOOD. With the automatic machines with one operator I think it is possible for them to turn out about 5,000 cigars a day.

Mr. SMITH. They figure on this type of machine, they figure about an average of 3,500 cigars a day of 8 hours with two girl operators. That is the unfortunate part of it because they are mostly girls used on these machines.

Mr. WOOD. What is a good day's work for a hand worker—250 or 300 cigars a day?

Mr. SMITH. That just depends, as to whether you mean straight hand work that is entirely done by hand or when you use the molds.

Mr. WOOD. That is hand work?

Mr. SMITH. I would say that the average cigarmaker, the one that does it by rolling entirely—we operate on this basis, the bunch breaker looks after from 2 to 4 rollers, mostly 3 rollers, and they

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between them turn out from about 1,500 to 1,800 cigars in an average day.

Mr. WOOD. Four of them?

Mr. SMITH. Yes; four of them.

Mr. WOOD. But the average production, though, of hand-made cigars does not average more than 250 cigars a day?

Mr. SMITH. No; I do not think the average will be more than that.

Mr. WOOD. And two girls working this automatic machine will produce 3,500 or 4,000 cigars a day?

Mr. SMITH. Yes; two girls will produce from 3,500 to 4,000 cigars a day.

Mr. HAINES. I would like you to remember, though, that this work is more or less speeded up and that the two girls can only work at it a few years when they are played out.

Mr. WOOD. Is it not a fact that 30 or more years ago 90 percent of the hands were men, and now about 90 percent of the hands are women, and they must be young girls, and for the bunch-breaking and rolling machine they must be pretty active?

Mr. HAINES. On the machine they must be very active.

Mr. WOOD. Yes.

Mr. HAINES. They won't use any old people on the machines?

Mr. EAGLE. Or anywhere else if they can help it.

Mr. WOOD. I drew that comparison to show how rapidly in the past 30 years the cigar industry has passed out, the men being replaced by the women, and how now the machinery has displaced the hand workman.

I do not think the restriction of these large factories to one shift will do. While I can see that it would increase the overhead and give the small manufacturer a better opportunity to compete, yet I think we must have reduced hours, and it is my view that in the very near future we must adopt the policy of taxing the machines. England uses it now. It is quite apparent that in some lines of industry the application of science and invention has resulted in the bringing out of machines which have developed so rapidly that I do not think that anything we may do in the way of legislating to 6 hours a day is going to pick up the slack.

The CHAIRMAN. That is right.

Mr. WOOD. We want to give the 6-hour day, but we must have other regulatory legislation taxing the tremendous output of these machines so that in some manner we can equalize the expense of production so that it may be distributed not only among the workers but among the smaller manufacturers who are now passing out rapidly. It is my view that within the next 10 years there will be mighty few small cigar manufacturers.

Mr. EAGLE. Or small anything in any kind of business in the country.

Mr. HAINES. Mr. Wood, the recommendation was made in the first code hearings that there be taxation of machinery and that it be distributed.

Mr. WOOD. The same condition prevails in other lines of industry. The same progress is made as, for example, in the manufacture of light bulbs and thousands of things you could mention. There has been a revolution insofar as the method of production is concerned. For instance, on electric-light bulbs. The light bulb from the time it goes in the machine until it is placed into the carton,

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and they even load the cars automatically, so that hands never touch them. But the cigar industry, I think, is facing a more intense development than almost any other industry, but they are all rapidly developing.

Mr. RAMSPECK. The same is true with the cigarette industry. They have automatic machine operation in that.

The CHAIRMAN. Mr. Smith, I have always felt along the lines that Mr. Wood has just stated, that this committee is particularly facing these problems. I think a shortening of the hours, say, the 30-hour week, 5-day week of 30 hours with the same wages that were paid before for a 40-hour week or a 50-hour week is all right. The Wagner bill, which would give labor its wage raise under collective bargaining, may not cover two other propositions. One of them is your machine doing away with labor—2 girls working where 7 men worked before, and the other is the age of a man, after 40, not being given any employment in any job at all.

Now, what applies to the cigar industry applies to shoes and textiles. They are gradually putting in machines that are in turn putting the men out of work. They will put 1 man on 6 looms in a woolen mill where previously they had 1 man on a loom. A man goes on the six looms and he is on the job all day long. He is on the jump. That is one of the problems that has come up, but it is not a problem of this committee. If it were, we would take charge of it, but it is a problem in taxation which goes to the Ways and Means Committee.

I agree with Mr. Wood that we have this problem and that we must shorten the hours of labor and increase the wages of labor, and the Wagner-Connery bill proposes to give labor its full rights. Then in your unemployment insurance you will derive other benefits so that when a man is thrown out of employment he will be paid, and there is no doubt that they will not be anxious to throw a man out and then have to pay him when laid off through unemployment insurance. And then in regard to the man above 40 years of age—it used to be 45 years, and now when they get to 40 they drop them out. We want you to know that this committee can legislate on these various problems except that of taxing the machines, and this committee has been doing it for 3 or 4 years. We have been trying to get legislation that will take care of it.

Mr. SMITH. Yes; and our purpose up there in Pennsylvania appears to be to get a cooperative program to save the industry—that is, the hand-making cigar industry. You understand from my statements in the small brief which I just read that the survey last year showed that many of the men, the manufacturers, were losing money, and some only operating on a small profit, so that our petition or our problem is a cooperative one among the cigar makers and the manufacturers of hand-made cigars and the people profiting directly or indirectly by the industry.

The CHAIRMAN. Of course, you always have the selfish interest of the man who is putting the machine in. He will not cooperate with the makers of hand-made cigars, even if the people starve. That is not his business and he is running his business and he is going to make a profit.

Mr. LESINSKI. What do these two girls get for the two—8-hour day machine running?

Mr. HAINES. I think I can answer that.

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Mr. WOOD. What is it?

Mr. HAINES. Twenty-nine cents an hour on the machine, minimum.

Mr. WOOD. In some instances it is lower than that?

Mr. HAINES. On the hand makers it is 27 cents. They make the two-for-5-cent cigars. They are compelled to stick to the manufacture of these two-for-5-cent cigars because they cannot go out in the highly competitive market and get the 5 cents.

The CHAIRMAN. I want to call the attention of the committee to the fact that it is 7 minutes to 12.

Mr. HAINES. You might do what they have done in Germany. They do not allow them to use the automatic cigar machines.

Mr. RAMSPECK. I want to get this in the record, that for manufacturing cigars by machinery the hourly cost is 58 cents as compared with the hand cost of $1.89 an hour for the same production.

Mr. HAINES. I have just been told that the wages that are now being paid to the operators of the machines are as follows: The first 2 weeks they get $6 a week, the second period of 2 weeks they get $8 a week, and the third period of 2 weeks they get $10 a week, and after that they are paid the minimum.

The CHAIRMAN. And another thing, if the President succeeds in getting these power companies to lower their rates it will be even less than 58 cents, because the electricity on the machines will cost them 5 cents less, so that will reduce the cost that much more to the manufacturers.

Mr. WOOD. I would like to ask one question: In what way has the code, that is, the code established for the cigar industry, benefited that industry? The intention of the National Industrial Recovery Act, of course, was to increase wage conditions and shorten the hours of labor and generally help employees of that industry. Now, has the establishment of the cigar code in any manner benefited the hand worker?

Mr. SMITH. No.

Mr. HAINES. Oh, yes; Mr. Smith, it has.

Mr. SMITH. I mean in reference to the employment.

Mr. HAINES. They have had a 50 percent increase in wages.

Mr. SMITH. Yes, in wages, I would say, but I mean employment. It really gave the machine interests the benefit and resulted in unemployment; that is, in regard to people working in the hand industry.

The CHAIRMAN. Wouldn't it have this effect: It costs the small manufacturers vastly more to produce 100 cigars in wages comparatively than it does now the large manufacturer.

Mr. SMITH. It does in regard to the machine interests; yes.

The CHAIRMAN. So that the only difference between the large and the small manufacturers is that the large manufacturers are given a greater advantage over the small manufacturers in the marketing of the cigars due to the lower cost of the machine-made product?

Mr. SMITH. Yes, sir; that is the position exactly.

Mr. RAMSPECK. I would like to put this further calculation in the record. Under the wages paid to the machine operators as compared to hand operators there is a saving of $1.31 an hour in wages, of which amount 4 cents is based on those two employees left and not eliminated by the machines and $1.27 goes into the pockets of the owners of the machine.

The CHAIRMAN. If there are no further questions, we thank you, Mr. Smith, for your testimony and you can be sure that this committee will do everything it can in the matter.

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(Mr. Smith submitted a copy of the petition and a cost sheet, which are as follows:)

COST OF MANUFACTURE

Two 58 soft work unit, price $2,500. Basis: Number of operators, 2; speed per minute, 10; actual production, 4,000 (in 8 hours); actual production, 20,000 (week, 5 days); actual production, 900,000 (45 weeks); actual production, 1,000,000 (50 weeks).

	Expense per year 10 machines	1 shift		2 shifts	
		900,000	1,000,000	1,800,000	2,000,000
(a) Depreciation, 10 percent	$2,500	$0.2770	$0.2500	$0.1385	$0.1250
(b) Interest on investment, 6 percent	1,500	.1666	.1500	.0833	.0750
(c) Power	50	.0056	.0050	.0056	.0050
(d) Mechanic, $45 per week	2,340	.2600	.2340	.2600	.2340
(e) Oiler, $20 per week	1,040	.1155	.1040	.1155	.1040
(f) Maintenance and repairs		.0500	.0500	.0500	.0500
(g) Forelady $25 per week	1,300	.1444	.1300	.1444	.1300
(h) Inspector $30 per week	1,560	.1733	.1560	.1733	.1560
(i) Feeder boy $15 per week		.0750	.0750	.0750	.0750
(j) Binder cutter $15 per week		.0750	.0750	.0750	.0750
(k) Direct labor		1.5000	1.5000	1.5000	1.5000
Total		2.8424	2.7090	2.6206	2.5290
Royalty, $1		1.0000	1.0000	1.0000	1.0000
Total		3.8424	3.7090	3.6206	3.5290
Royalty at $750 per year		.8333	.7500	.4167	.3750
Total		3.6757	3.4590	3.0373	2.9040

We, the undersigned citizens of York and Adams Counties, and vicinity, in the State of Pennsylvania, concerned and employed in the manufacture and distribution of hand-made cigars whereby this cigar might be produced and marketed at a fair profit and afford to labor an adequate living wage, cooperatively represent:

1. That the danger of mechanization of our industry is imminent. Chaotic conditions would follow such a movement, seriously affecting the lives of all who are dependent upon the hand cigar-making industry as a means of livelihood.

2. That immediate action for the protection of our industry, our homes, and our people is vitally necessary.

3. That humanity must not be sacrificed in the effort to exploit automatic machinery to the highest degree of efficiency.

4. That only girls are employed on automatic cigar-making machines, leaving the heads of families unemployed. Approximately only 30 percent of the girls attempting to operate these machines acquire sufficient speed to be retained as qualified employees.

5. That the manufacturers of hand-made cigars are compelled to compete with machine manufacturers who have a decided advantage over hand manufacturers in production costs.

6. That labor, with depleted pay envelopes and unemployment, will be forced upon the mercies of relief or the dole.

7. That automatic machines replace man power at the alarming rate of 30 percent to 300 percent per machine. Newer and faster machines are being introduced periodically in our industry, imposing hardships upon manufacturers and their employees in the hand-made cigar industry, depriving us of human rights which are inherently ours.

8. That but a small percentage of the hand cigar-making industry will survive if mechanization is permitted.

9. Therefore we, who are directly or indirectly concerned and affected where labor-displacement machinery is being operated, do endorse and support this petition to regulate automatic machine operation to eight (8) hours per day, forty (40) hours per week, and in no case to exceed the number of hours per day man is permitted to work. On these premises, we contend, the hand cigar-making industry might be saved to operate at a fair profit and afford to labor an adequate living wage.

The CHAIRMAN. We will meet tomorrow morning at 10 o'clock, when we will hear President Green of the American Federation of Labor.

(Thereupon, at 12 noon, the committee adjourned to meet tomorrow, Wednesday, Mar. 20, 1935, at 10 a. m.)

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LABOR DISPUTES ACT

WEDNESDAY, MARCH 20, 1935

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

The committee met at 10 a. m., Hon. William P. Connery, Jr. (chairman), presiding.

The CHAIRMAN. The committee will be in order.

Gentlemen, it is not necessary to introduce the witness we have before us this morning. We have the honor of having with us William Green, the president of the American Federation of Labor.

Mr. Green, we shall be very glad to hear you.

STATEMENT OF WILLIAM GREEN, PRESIDENT AMERICAN FEDERATION OF LABOR

Mr. GREEN. Mr. Chairman and members of the committee, I am happy to come this morning and meet with you and present to you the urgent appeal—not only the recommendation, but the urgent appeal of the American Federation of Labor that H. R. 6288, the bill under consideration this morning, be enacted into law.

The American Federation of Labor regards this bill as of major importance. The workers back in the towns and villages and cities throughout the Nation entertain the same point of view.

We have here this morning a committee from McDonald, Ohio, representing the steel workers. They have brought to Washington a petition signed by 20,000 steel workers appealing to Congress to enact the Connery-Wagner Disputes Act into law. These petitions were signed voluntarily. I did not even know that they were being presented here until the committee advised me they were here with the petitions. It was spontaneous, voluntary.

One cannot fail to understand, when a committee of that kind comes to Washington with petitions signed by 20,000 names, that there is a deep-seated sentiment existing among the workers in support of this measure.

I should like the representative of this committee to be given the opportunity of saying a word to you about it, following the submission of my statement.

The CHAIRMAN. We shall be glad to hear him.

Mr. GREEN. I have a brief statement to make, Mr. Connery, and I shall probably supplement it by interpolations as we go along.

The CHAIRMAN. Please proceed.

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Mr. GREEN. For the past 10 days representatives of labor have presented before your committee and before the Senate Committee on Education and Labor the experience of workers under section 7 (a) of the National Industrial Recovery Act and under Public Resolution No. 44.

I shall not today attempt to place before you in detail the methods which have been used by unscrupulous and ruthless employers to defraud workers of their rights under section 7 (a). Every member of this committee is, I am certain, familiar with the sorry story of subterfuge and evasion by which employers have avoided their duties and responsibilities under section 7 (a). They have resorted to every kind of trickery, and the boards set up to enforce the law have been denied the power which is essential if they are to make the law function. Evasions of their duties by employers have been consummated through discrimination of every sort—through discharge, through the creation of company unions and the subsequent evolving of the doctrine of the minority representation to protect those company unions; by the use of the great financial resources which many employers control to prevent or destroy organization, and by the use of the courts to delay or prevent the holding of elections.

Company unions, dominated and controlled by employers, have been established far and wide in order that the bargaining agency of the employees might be directly under the thumb of management. Tremendous expenditures have been made by employers in fostering company unions and in many cases these unions have been made a primary condition of employment. Many companies have used elaborate and costly spy systems to assist them in breaking down the self-organization of their employees and in building up their company unions.

The effect of all these practices has been direct and tragic upon thousands of workers. It is to correct these conditions that the Connery bill has been proposed. Employers must keep hands off, completely, so far as labor organizations are concerned. Any other course of action cannot be reconciled with the belief which we all profess that employees are free citizens of the United States, and are not a menial or servant class, subservient to and controlled by the employing class.

I hold that the employers of labor have no right, either morally or legally, to interfere in any way with the exercise of the right of the workers to join a union of their own choosing. And yet we find large corporations, like rubber, steel, and automobiles, engaged actually in organizing competing unions, or company unions.

Following the decision of the National Labor Relations Board ordering elections in the Firestone, Goodrich, and Goodyear Tire & Rubber companies, in order to determine the bargaining agency which the workers wished to select by a majority vote, through which they could deal with their employers, these corporations employed hundreds of men in their plants for the purpose of organizing, fostering, and maintaining company unions, established by the companies inside the plants. That is coercion; that is intimidation of the worst kind.

The tragic feature of it is that they used the funds of these workers; the company held the earnings of the workers for the pur-

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pose of promoting organizations in competition with the independent trade unions set up by the workers themselves.

I hold that that must stop in America. The corporations must confine themselves to industrial processes. They must not, under any circumstances, interfere with the exercise of the right of the workers to establish their own unions. And we are looking to Congress for help, if we want to make the word, "freedom", a real vital force; freedom for the workers; freedom for them to organize; freedom for them to bargain collectively; freedom for them to mobilize their economic strength; and freedom to use it in acordance with their own judgment.

The workers of this country look upon collective bargaining as the one real solution to their problems. If they have the right of self-organization and of collective bargaining they can improve their working conditions and bring about that adjustment in the distribution of income which is so essential to recovery.

I do not propose to dwell at length on the fundamental necessity for the establishment of the quality of bargaining power between employer and employee. I am not alone in the conviction that it is only through the establishment of such equality of bargaining power that such redistribution of income can be made as will enable our country to proceed under an economy which will mean, not the highest possible profits for the few, but the greatest possible benefits for the many.

There can be no equitable distribution of wealth created until equality of bargaining power has been set up between the workers and the employers in industry; and that equality must be of such a character as to enable the workers to bargain advantageously for the sale of their labor. You cannot do it unless they can select their own bargaining agency, their own union, democratically controlled, managed by the workers, protected by the workers, financed by the workers—the workers' own organization set up by themselves.

All we have ever asked is that the workers be accorded the opportunity to determine that question for themselves. If they want to select the American Federation of Labor union they have a perfect right to do so. But if they want to select another union, an independent union, they shall have the right to do that. We have no quarrel with them if they make that decision. But why not accord them the right to determine the question for themselves.

Aside from the economic necessity of collective bargaining we must recognize that workers throughout the country are entitled to a definite voice in the determination of the conditions under which they are to work. Collective bargaining between management and workers means more than the determination of hours of work and rates of pay which are to prevail in a given plant. The problems which arise in the administration of any manufacturing or commercial enterprise are legion. These problems cannot be handled with maximum effectiveness unless there is true cooperation between management and employees, who are directly involved in the process.

On June 16, 1933, by the adoption of the National Industrial Recovery Act, Congress expressed its will that collective bargaining should provide one of the fundamental bases of the "new deal." I do not believe that the intention of Congress was to give the work-

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ers of this country an empty right, which could mean nothing to them. No honest, sincere Congress ever intended that that should be the interpretation placed upon the National Recovery Act. But the will of Congress has been thwarted and set at naught in the past 2 years and the workers have been defrauded of the rights which Congress believed it had conferred upon them.

Section 7 (a) as it is at present interpreted has accomplished much in the past 2 years, despite the deliberate evasion of employers. It has provided the important first step in assuring to workers that equality of bargaining power which is essential in the protection of workers in their relations with the huge corporations which are now an inherent part of our economic system. Individual workers have no power to bargain. The obvious natural thing then is for them to find strength in unions and to select someone to bargain for the group. This natural development has been relentlessly opposed by employers because it limits their power to accumulate wealth for themselves by paying the smallest possible wages to employees. Only by organization of wage earners into self-controlled unions can workers bargain with their employers on an equal basis.

But the legal right to organize and bargain collectively was only the first step. We have had valuable experience since June 16, 1933, upon which we must now build a permanent program. That permanent program is embodied in the present Connery bill.

The workers of this country will never go back to the situation in which they found themselves before June 16, 1933. They have become more conscious than they have ever been before of their rights to self-organization and of the importance of collective bargaining in any program of recovery and reform. There is an unrest among the workers of this country which will find an outlet. If the present bill becomes law that outlet will be found in the orderly attempt to organize and to bargain collectively with their employers. If the Wagner-Connery bill does not become law, there will be no course open to the workers but to try to secure their rights by the use of their economic power.

That is their only alternative. And so the question is, whether it shall be the public policy of the United States to follow an orderly process as is now being followed in the transportation industry of the Nation, or whether it must be that the workers where they organize shall engage in strikes for the purpose of enforcing their legal rights.

I do not mind telling you that the spirit of the workers in America has been aroused. They are going to find a way to bargain collectively. The day of individualism is past, and they are tired of it, because they have been exploited. If they are denied the right to bargain collectively in an orderly way and through orderly processes, they are going to use their economic strength, and the American Federation of Labor will encourage them to use it, support them in using it. They must not and shall not be denied the exercise of their rights. The establishment of labor in our whole economic and political system in a place where it belongs, must be recognized. Labor must have its place in the sun.

It lies with Congress to choose which way the working men and women must take. Collective bargaining has not yet been made real

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and vital. Only Congress can make it so. Workers are determined to have a voice in the conditions under which they work. They still look to the Government to give them that voice. Their faith that the Government will do so has in the past 18 months become seriously shaken; it is, however, by no means destroyed. If the present bill is adopted, the workers will feel that the Government has kept faith with them and has made the "new deal" a reality for labor.

Let me refer to one most distressing and tragic circumstance through which labor passed; an experience under the National Recovery Act. I think I can state truthfully that nothing that has ever happened, no measure enacted by any legislative body so inspired the workers of the country as did the enactment of the National Recovery Act with section 7 (a) included.

It was like a crusade, a revival. It seemed as though the shackles that had bound the workers were thrown off, and now they were free, because section 7 (a) proclaimed, "You may organize and bargain collectively." And workers who had been held in a state of fear, who had been afraid to join an organization stepped out because, "Now we are free."

Imagine their disillusionment when many of them were discharged; discriminated against; driven out; persecuted. They just could not realize it. They were dumbfounded. But that is what has happened, and all over this country you will find the wreckage—hundreds and hundreds of fine men who have been driven from one point to another, discharged, because they dared to exercise their rights under section 7 (a).

Now, the Government aroused that hope. The Congress, the administration aroused that hope. They fanned the flame, they made the workers believe they had the right to organize. They wrote a promissory note, and it has not been redeemed. Now, we are calling upon Congress to make good.

I wanted to tell you about that one experience, and that was this. We were still heartened by developments that took place following the application of the National Recovery Act. Here is one instance where even the fading hopes of a lot of workers were again aroused. That was in the case of the Executive order of the President on February 1. I want to read it to you so that you, yourselves, may understand the simple language, the direct language used, in dealing with this subject of collective bargaining. This was the Executive order issued by the President of the United States.

The CHAIRMAN. When was that?

Mr. GREEN. February 1.

The CHAIRMAN. This year?

Mr. GREEN. 1934.

Whenever the National Labor Board shall determine, in such manner as it sees fit, that a substantial number (as defined in the discretion of the board) of the employees, or of any specific group of employees, of any plant or enterprise or industrial unit of any employer subject to such a code or agreement, having requested the board to conduct an election to enable them to choose representatives for the purpose of collective bargaining or other mutual aid or protection in the exercise of the rights assured to them in said section 7 (a), the board shall make the arrangements for and supervise the conduct of an election, under the exclusive control of the board * * *

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There is the answer to Mr. Weir. There is the order of the President, that the election, whenever the Board shall determine that an election shall be held in order to determine what bargaining agency the workers want, shall be held under the exclusive supervision and direction of the Board. The Board decided that such an election should be held in the Weirton Steel Plant. Mr. Weir agreed that it should be held, but when the Board undertook to carry this out, Mr. Weir said, "no", and no election has ever been held.

Now, that is plain and simple language, is it not? [Reading:]

Under the exclusive control of the Board, and under such rules and regulations as the Board shall prescribe.

This paragraph continues:

Thereafter—

Now I ask the members of the committee to give special attention to this, because it is significant, highly significant.

Thereafter the Board shall publish promptly the names of those representatives who are selected by the vote of at least a majority of the employees voting, and have been thereby designated to represent all the employees eligible to participate in such an election, for the purpose of collective bargaining or other mutual aid or protection in their relations with their employer.

Now, the President in that Executive order established two very vital, fundamental principles. First, whenever there was the necessity of an election, the election should be held under the supervision of the Board, under its control, and in accordance with such rules and regulations as they might set up. That was first the power conferred upon the Board.

Second, that the agency selected by a majority of the workers must be recognized as the bargaining agency, and when the representatives of the majority of the workers negotiated an agreement, that agreement applied to all in the plant.

In other words, there were two things: The right of the Board to hold the election. and the principle of majority rule.

All right: That is clear, is it not? Now, behold! What happened?. We assumed that that was definite. That is simple English language, isn't it?

On February 4 we find an interpretation of that Executive order made by former Administrator Hugh S. Johnson, and Donald R. Richberg, Administration's General Counsel. Let me read from that. This is a part of our tragic experience—this that I am about to read:

This selection of majority representatives does not restrict or qualify in any way the right of minority groups of employees or of individual employees to deal with their employer.

Section 7 (a) affirms the right of employees to organize and bargain collectively through representatives of their own choosing; and such concerted activities can be lawfully carried on by either majority or minority groups, * * *

Is that in the Executive order?

* * * organizing and selecting such representatives in such manner as they see fit. Also, in affirming this right of collective action the law lays no limitation upon individual action.

In other words, Mr. Johnson and Mr. Richberg say that what the President stated is not the law—and the President said, "the majority rules."

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Mr. Richberg and Mr. Johnson say, "either majority or minority, and not only that, but individual as well."

That did us more harm than any interpretation that was made by anyone serving in an administrative capacity in the National Recovery Administration. It was the basis for the automobile settlement that has caused turmoil and strife ever since, the principle of minority representation. It cannot work. It will not work. It never has worked, and there is not any responsible labor man or representative of industry that will say that it will work.

There must be a responsible bargaining agency on one side and a responsible bargaining agency on the other, and there must be uniformity and stability. That can only be established through the negotiation of an agreement between the one responsible bargaining agency speaking for the workers and the responsible bargaining agency speaking for the employer.

This interpretation, I say to you, took the heart and teeth and the soul out of section 7 (a); and we have never been able to overcome that interpretation because the administration itself never protested the interpretation. The interpretation has stood. We feel very strongly about that, and we are asking Congress to right that great wrong which has been done labor.

To appreciate what the adoption of section 7 (a) meant to the workers in the summer of 1933 it is necessary only to look at the veritable uprising of wage-earners which followed immediately upon that law, to organize into unions for collective bargaining with their employers. Yet, they have found themselves frustrated at every turn in their efforts to bargain collectively.

Mr. Francis Biddle, Chairman of the National Labor Relations Board, made the statement before the Senate committee that if the Wagner-Connery bill is not adopted, the position of his board will be so seriously undermined that it will serve no worth-while purpose. I say to you that if Congress does not act now to make collective bargaining real and vital, by the adoption of the Wagner-Connery bill, it had better repeal section 7 (a) and not continue on the statutes a law which is used only to deceive the workers. Take it out, if we are not going to make it vital and the workers of the Nation will know then what they must do and what situation they must face. Either give us the Wagner-Connery bill or take out section 7 (a). An unenforced and confusing section 7 (a) will do far more harm than will an honest recognition of the fact that no protection will be given the workers by the Government in the establishment of self-organization and collective bargaining. They will know then that they have only themselves and their own efforts upon which to depend and they will chart their course of action accordingly.

It has become all too clear that under existing conditions section 7 (a) cannot be enforced. The Board cannot enforce its decisions. It has no power. It cannot even subpena a witness. It cannot call for papers, documents. It is powerless. Experience is a good teacher. It shows that the Board in its attempt to render excellent service is impotent.

I want to say that the Board has rendered excellent decisions. I have no fault to find with the National Labor Relations Board. Its decisions have been sound, in my judgment. But the Board was

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stopped in its decisions, and I say to you, notwithstanding that it has ordered numerous elections, not one has been held—not one. These corporations have been more powerful than the Government, than the judicial body set up by the Government. They have said, "No", and there has been no power to compel them. But labor has suffered. Labor has paid the price. The National Labor Relations Board finds itself virtually powerless.

In every case in the past several months where an election has been ordered by that Board to determine the organization by which the employees wish to be represented in collective bargaining, employers have refused to submit to the election and have used the courts to prevent the Board from carrying out its order. Despite the flagrant violations of section 7(a) which have occurred throughout the country, and despite the recommendations and rulings which have been handed down by regional boards and the National Labor Relations Board, not one single case has been prosecuted since last July and only one case, that of the Houde Engineering Corporation, has been actually taken to the courts. The extent of the power of the National Labor Relations Board up to the present time has been the recommendation that the "blue eagle" be removed, and that the case be referred to the Department of Justice. "Blue eagles" have been removed, but the Department of Justice has been unable or unwilling to prosecute the cases in the courts. Actually, the Department of Justice has not the experience and perhaps not the sympathy -wth collective bargaining legislation to make an effective enforcement agency; its attention is divided among many phases of law enforcement. Collective bargaining is a new field and requires specialized study and interest.

The Board which is dealing constantly with collective-bargaining problems is the only logical enforcement agency. The present method has and would in the future mean delays which are destructive to the unions. The very nature of a union requires swift action. Delay, beyond the power of the Board to prevent, has in the past 2 years been the means of completely destroying many unions and of bringing great hardship and bitterness to the members of those unions.

The bill which is before you for your consideration would outlaw those unfair-labor practices which have destroyed the right to organize and bargain collectively and, furthermore, which have resulted in widespread injustice and exploitation throughout our land. The bill furthermore would give the National Labor Relations Board certain power on the basis of which I sincerely believe the right to organize and bargain collectively might be made a reality.

I want to call especially to your attention the question of majority rule which is covered in section 9 (a) of the bill. Under this rule representatives selected by the majority of the employees in any bargaining unit are held to be the exclusive representatives of all employees in such unit.

Now, when you keep in mind the language of the Executive order which I read you will understand that you are not asked to do anything more than write in this bill the interpretation which the President put upon section 7 (a). He made that interpretation in that Executive order. We are asking that his Executive order be incor-

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porated in the bill. The principle of majority rule was established by the National Labor Board, in the *Denver Tramway case;* it was established by the National Labor Relations Board, in the *Houde Engineering Corporation case*, and has been repeated in many later decisions.

The Executive orders of President Roosevelt which created the Steel and Textile Labor Relations Boards contained provisions for majority rule in collective bargaining. Majority representation is the principle upon which our Government is based. Collective bargaining can obviously succeed only when majority rule is made effective, just as Government can succeed only under majority rule. Employers who are bitterly opposed to collective bargaining realize this and have evolved the doctrine of minority representation to prevent and destroy genuine collective bargaining. They know they have little to fear if they can so divide and weaken their employees that they can play one group against the other and never enter into real bargaining with any group.

This minority-representation plan is deceptive. The average person would react favorably to a plan which would provide for negotiation with minority groups; give each the right to be represented by men of their own choosing. But it is so deceptive. The trouble is that the employers of labor simply use these minority groups for the purpose of breaking down the wage structure and for the purpose of creating division and dissension and for the purpose of establishing and perpetuating their own company union.

Let us visualize the situation for a moment. Let us say there is a plant run by John Jones where a thousand workers are employed; 600 of those are in an independent union organized by the workers; 400 of them are in a company union. Under the minority representation plan, the employer would deal with the representatives of the 600 and the representatives of the 400. The majority would want a wage increase and they would fight strenuously for it, so aggressively that the employer would arrive at the conclusion, "I will have to grant this wage increase in order to avoid trouble."

Do you think he would ever grant that wage increase to those who had made the fight to get it? What he would do would be to call in the representatives of his company union and say, "Now, boys, we love each other. You represent the workers. We are a happy family. You are a part of my corporation. We are with you. I have decided to grant through you a wage increase for everybody. You are the ones. Go out and tell the boys that you got it.

Then they would go out and tell the boys that, "The management has granted us an increase in wages."

What would happen to this independent union? It would fade out of the picture completely, and absolutely, notwithstanding that it had been successful in making the fight. The employer had used the minority group against the majority group. A union could not live under such circumstances. And they know it quite well.

Within a few weeks, the workers in the automobile industry who believed that they might bargain collectively under the works councils created by the Wolman Board have discovered the fatal weakness of that method of dealing with the employers, and are searching for some other way of carrying on real collective bargaining. They

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have found that the so-called "bargaining committees" set up by the board are actually little more than committees controlled by the employer exactly as he controlled the employee representation plans or company unions which he openly instituted.

Employers recognize the principle of majority rule in their own associations; codes are adopted by a majority of the industry and imposed upon the minority.

They applied it in their codes. They adopted their codes by a majority of the industry and imposed them upon the minority. We all know that. It is particularly absurd and unjust that employers who benefit from that principle as applied to Government and to industry should deny it when it is applied to employer-employee relationships. Imagine what confusion would exist if the majority of the employers and a minority of employers and individual employers would negotiate codes for each group. Would that work? Well, if it will not work in that kind of relationship, how will it work in a relationship between employers and employees? Employers say, "Yes; we want majority rule in our dealings with the Government. We bargain collectively with the Government. We want it there. We want to make the fellow who does not want to be good, to be good. We want the majority to exercise the 'big stick.' But what we want and what we can have you shall not have. What is sauce for the goose is not sauce for the gander."

I cannot believe that this Congress of the United States will ever permit that. I know they will not if the facts can be presented to them in the proper way.

The Connery bill will end the uncertainty which has prevailed. There will be no room for questionable interpretations on this point after the adoption of the bill, nor will there be opportunity to deny to one group of workers the privileges given other workers because of varying interpretations of the law.

We do not deny and never have denied that an individual and even a minority group of workers should have the right to appeal to the employer on grievances which involve only themselves. Any worker has a right to present a grievance. We readily agree with that, that a minority group may present grievances to the management for adjustment. But when it comes to collective bargaining, there must be established one bargaining agency and the grievances presented by an individual or group of individuals must be settled in accordance with the terms of the agreement. But it cannot be that two agencies are permitted to negotiate with management for general conditions of employment. Time and again employers make greater concessions to the company unions than to the bona fide union in order that their employees may be discouraged from joining a bona fide labor organization which would give true bargaining power. I repeat, if there is to be true collective bargaining, the principle of majority rule must be definitely recognized and written into the law.

I want to urge upon your committee that nothing be permitted to stand in the way of the adoption of the Wagner-Connery bill. In no other way can Congress make it clear to millions of workers that it intends to fulfill the promises it gave the working men and women of this country on June 16, 1933. If the bill is adopted, we can move

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forward to permanent, mutually satisfactory employer-employee relationships in industry.

The working people of this country have during the past 2 years been very patient.

I wish that I might take this committee out into the homes and communities where the steel workers live and are employed, and into the homes and communities where the rubber workers and the automobile workers are employed, and where employees are serving in other mass production industries and there call to your attention the wrecked homes, the wrecked hopes, the persecuted individuals, the discharged workers, who had splendid records. You will find them suffering because they dared to step out and join an organization in accordance with the exercise of what they believed were their rights under section 7 (a).

There they are, the living examples of ruthless persecution, driven from pillar to post, from community to community, persecuted, discriminated against, discharged. We cannot tolerate that condition in America.

They have suffered discharge and want and humiliation, believing that the Government was behind them in the struggle. They have waited for Government enforcement of their rights through the agencies set up to enforce section 7 (a). But there is growing in the masses of American people a bitter resentment at the position in which they find themselves and a deep conviction that only their own economic strength will avail them in their struggle against the injustices and inequalities under which they work. We must face the consequences of a deliberate destruction of their faith. Working men and women throughout the land are demanding justice, demanding the rights and privileges to which they are entitled. Justice to a very large degree can be brought to the workers through the enactment of the Wagner-Connery Disputes Act.

Mr. Chairman, I want to supplement that brief statement by one or two recommendations. First, the American Federation of Labor believes that the Board created under the provisions of the Connery-Wagner Act should be lodged in the Department of Labor. The officers and members of the American Federation of Labor are in thorough accord with the recommendation made by the Secretary of Labor regarding the establishment and creation of the Board.

It is difficult to explain, perhaps, but nevertheless it is true, that the laboring people throughout the country look to the Department of Labor as their Department. They feel that it was particularly created for the purpose of promoting and advancing their economic, social, and industrial welfare. They deal directly with the problems that affect labor—hours, wages, conditions of employment. Their mediation board, their statistical bureau, are all steadily engaged in serving labor. Besides, it is the Department of Labor, presided over by a Secretary of Labor. The Secretary of Labor is a member of the President's Cabinet.

Why should there be a division? I am strongly of the opinion that the Board should be a part of the Department of Labor, an integral part of it, associated and connected with the Department of Labor, but free and independent so far as its judicial processes are concerned; free to render its own decisions without interference;

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free from any restraint whatsoever. I cannot see any serious objection to that.

Then we believe that the Board ought to be a bipartisan board, a board upon which labor is represented, so that the labor point of view may be presented when judicial determinations are being made.

These recommendations I make on behalf of the American Federation of Labor. There are several minor amendments that we should like to offer. I will present them to you later. It is not necessary to go into them now for your consideration. I shall be very much pleased if you will give them serious and careful consideration.

Mr. Chairman, that completes my statement, and I assure you I am glad to be here and to have had an opportunity to make it. I do hope that our friends in the House will organize aggressively for the purpose of securing the enactment of this bill at this session of Congress.

We got nothing at the last session of Congress except Resolution 44. Resolution 44, while it meant a great deal, and while, under the Board set up by Resolution 44 a number of fine decisions have been rendered, section 7 (a) still remains unworkable and unreal so far as the workers are concerned.

We want something at this session of Congress. I do hope that this committee will report this bill favorably; that our friends in this House will organize into a fighting group, determined that the wishes of labor in this respect at least shall not be denied.

Thank you, Mr. Chairman.

The CHAIRMAN. That is a fine statement, Mr. Green. There are one or two questions I would like to ask. Let me say that I am open-minded with reference to where the Board should be lodged. Mr. Biddle said here yesterday that he favored its being separate from the Department of Labor.

Of course, I concede that their judicial decisions should be unhampered. When you said that, it probably settled the doubt in my mind. But what would be your set-up in the Department of Labor? The Board is appointed by the President. At the present time they are off to themselves, and any decision that they make is made really under the President. But under the Department of Labor, would they be hampered in any way?

Mr. GREEN. I cannot see, Mr. Chairman, where they would be hampered in the least degree, but on the contrary, I think their opportunities to weigh most carefully the questions which come before them and to secure all information possible in order to arrive at a fair decision would be increased.

First of all, the Mediation Board is in the Department of Labor. The Department of Labor has built up a fine statistical bureau. It is resonable to conclude that a labor board could not function without the services of a statistical bureau and perhaps it might need the services of a mediation board.

It will either have to use these bureaus already created by the Government in the Department of Labor or set up new statistical and mediation bureaus under it.

It does not look as though it would be good public policy to duplicate these services. They can draw upon the statistical bureau

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and they can call for services from the Mediation Board. They can use the entire machinery of the Department of Labor in arriving at their conclusions.

I would favor that the board be independent with no review of its decisions by any one, their decisions to go to the President either directly or indirectly, through the Secretary of Labor, without any interefrence, without any change or modification, without their being subject to review by any one.

The CHAIRMAN. That is what I had in mind.

Mr. GREEN. The board should be independent so far as its judicial processes are concerned. I think the best service can be rendered, and I know the greatest feeling of satisfaction among the workers can be created by establishing it as a part of the Department of Labor.

The CHAIRMAN. I wondered, in the first place, why the President set up the Wagner Board and did not put it under the Department of Labor. He made that separate?

Mr. GREEN. Yes.

The CHAIRMAN. I wondered what his idea was at the time. But, let me speak frankly. Let us consider the political angle. I would not like to see these decisions hampered in any way. I do not refer at this time to Miss Perkins, the Secretary of Labor, because I have the greatest respect for her. But for political reasons, any Secretary might say, "Well, we will not take up this matter; we will not touch the *Weirton case*." In other words, it would not give the Board the power to go into the *Weirton case*, or some other case, because the Secretary of Labor would be the head of the Department. The Secretary might say, "We are not going to touch that case. You come under the Department of Labor. We are not going to touch it."

That would be a great handicap, would it not?

Mr. GREEN. I cannot conceive of such a situation.

The CHAIRMAN. Of course, I do not say that that would be done.

Mr. GREEN. Because, as I understand it, under the provisions of this act, the board is clothed with authority to take jurisdiction in all cases.

The CHAIRMAN. What I have in mind is to put those safeguards around the board so that that could not happen. I do not care whether it is under the Department of Labor or is separate; just as long as in their action they are independent, so that they might make decisions like the Wagner Board did.

Mr. GREEN. That is important, of course, that they shall be free to make their own decisions without interference by anyone.

The CHAIRMAN. Mr. Biddle, who was here yesterday, offered a suggestion to which I want to get your reaction. I am referring to page 9. He suggested that there be a new section 5, to the effect that it be an unfair labor practice for an employer to refuse to bargain collectively.

Mr. GREEN. I think that is a very constructive suggestion.

The CHAIRMAN. I wanted to get your reaction to that.

Mr. GREEN. I think it is a very constructive suggestion.

The CHAIRMAN. You refer to a bipartisan board. What do you mean by a bipartisan board? How many members would be on the board?

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Mr. GREEN. I hesitated to suggest any specific number; three or five. I supposed it would be an odd number. What I had in mind was that there should be a balance of representation, with industry and labor both represented, and then an impartial chairman holding the balance of power.

The CHAIRMAN. There would be three members of the board, and you would not care who they were as long as you had an organized labor man as one, and a third man who was neutral.

Mr. GREEN. Yes; all to be appointed by the President.

The CHAIRMAN. It was inconceivable to me, when we look at the plain language of the Executive order of the President, to which you called attention, which indicated what section 7 (a) meant and what Congress intended it to mean, that Mr. Johnson and Mr. Richberg could come out with an interpretation which changed the whole situation. I do not understand action like that. The President speaks in an Executive order, and that should be the last word.

Mr. GREEN. We cannot understand it, Mr. Chairman. That is one of the mysteries of the administration of the National Recovery Act. We just cannot understand it; we have never been able to understand it. As I say, it took the heart and the soul and the like out of section 7(a). It established from February 4, 1934, the principle of minority rule. Here we have got majority rule only where we enforce it by our economic strength. It is the basis for all these suits inaugurated by companies against us.

The CHAIRMAN. There is one more matter on which I should like to get your reaction, and it is something that I am a little worried about. At the bottom of page 9 is reads:

> **The representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *.**

I am somewhat leery of this proviso which reads:

> ***Provided*, That any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing.**

Suppose you are the employer, the owner of a factory. Mr. Wood, here, represents a minority group, and Mr. Griswold, represents the majority group. Mr. Wood comes to present a grievance to you. He presents his grievance. Perhaps it is for more pay. You say, "All right, Mr. Wood, we will give your group, we will give the whole factory more pay." Does not that give them the same opportunity to go back, as you illustrated a few minutes ago, and say to the whole plant, "Well, we got this. Griswold did not get it; we got it."

I am a little bit leary of that language, and I want to get your reaction on it. I would like to see it so that after they present their grievance then the matter must be taken up by the majority with the boss of the plant.

Mr. WOOD. I think that language is very ambiguous, Mr. Chairman, and may be subject to many interpretations.

Mr. GREEN. As drafted, it is. As I say, we have no objection because that is in accordance with collective-bargaining relationships

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and processes, that an individual who wishes to take up a grievance with the management shall have the right to do so. In fact, as perhaps you know, Mr. Congressman, there are many wage agreements which provide that the grievance committee, representing the workers in a plant or establishment, will refuse to handle an individual agreement until after the individual, himself, has made an effort to settle it. It does not go to the committee until he tries. As you know, that is incorporated in many wage agreements.

Mr. WOOD. That is true. But according to this language here, who are the representatives of their own choosing? That would indicate to me a minority group of employees could go to the employer with their grievance. They have selected their own representative. It goes without saying, if they have an agreement with respect to collective bargaining, that representatives of their own choosing should be representatives of the majority. This seems to indicate that they may select anyone else they wish.

The CHAIRMAN. In other words, you inject your company union just the same. Suppose something like this were added—and this is just general language:

Provided, further, That if such grievances are presented to the employer, these grievances will be taken up by the employer and the representatives of the majority and settled.

Mr. GREEN. I think that is one of the sections that we wish to amend.

The CHAIRMAN. I wanted to call attention to it so that when you do offer amendments to the bill, you will have that in mind after discussing it with your own people.

Mr. GREEN. Thank you. What we wish is that it might state clearly that the individual employee shall be accorded the right to present grievances to his employer for adjustment. That is about as far as it should go.

The CHAIRMAN. I agree with you.

Mr. WOOD. That is correct.

Mr. GREEN. "Or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing," is confusing and misleading.

The CHAIRMAN. Taking the illustration that you gave us a moment ago, if the 400 men representing a minority went to their employer and he said, "All right, I will grant you the wage increase you ask for", they would be the boys who would have gotten the increase and that argument could be used, just as you illustrated it, to break up the union.

Mr. GREEN. What we are willing is that the individual may go to the management with his grievance, and if it is confined to an individual I think it will be in accordance with the spirit and letter of the National Recovery Act.

The CHAIRMAN. Will you have that in mind when you come to offer amendments to the bill?

Mr. GREEN. I shall offer an amendment on that subject, Mr. Chairman.

Mr. EAGLE. Right on this point, Mr. Chairman, that you and Mr. Green have sanely and interestingly discussed, I have this suggestion. Suppose there were stricken out the entire proviso. It would

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follow that the individual or any subdivision of a minority would have the right to go and make representations. Why? Because in this act they are not prohibited from so doing. I offer that as a suggestion.

Mr. GREEN. I think you are right. I think as long as they are not prohibited from taking it up, the individual can take it up.

Mr. EAGLE. Then you do not confuse the meaning of this, and you will not have another Richberg decision?

The CHAIRMAN. We can get around to those suggestions when we go into executive session. We will be glad, Mr. Green, if you would offer something along that line.

Mr. GREEN. I will accept your suggestion, Mr. Chairman.

Mr. TRUAX. Mr. Green, we have all had some experience with boards, particularly during the present administration. One thing that I observe is that after a board is created, appointed by the President, such as the H. O. L. C. Board, or the Farm Credit Administration, the Federal Housing Administration, and so forth, the tendency is for the members of these boards to become bureaucrats, after they are once inducted into office. We had a lot of complaint on the floor of the House about the arrogant and the dictatorial methods of the bureaucrats in the Home Owners Loan Corporation and the Farm Credit Administration.

Could there be any safeguard thrown about the selection of the personnel of this Board which should function for labor? Do you know of any manner in which we could safeguard that so they would at all times after their creation be responsive to the wishes and needs of labor?

Mr. GREEN. Mr. Congressman, I think that the appointment of this Board is pretty well safeguarded. The appointments will be made a little differently than the appointments to the Home Owners' Loan Corporation and these others to which you referred. Of course, there is this difference, too. Those boards are administrative boards, whereas this Board is rather of a judicial character, and, as I understand it, the bill provides that they must be appointed by the President and confirmed by the Senate.

The CHAIRMAN. There is your answer.

Mr. GREEN. There is the protection.

Mr. TRUAX. That is true, but even on the best board you might get another Richberg, who is supposed to be a staunch and loyal friend of labor.

Mr. GREEN. Well, we have run into that experience, of course. But these appointments are safeguarded to some extent at least by incorporating the provision that the President shall appoint, but the Senate must confirm.

Mr. TRUAX. That is true.

Mr. GREEN. So that we will be able to examine them a little, anyhow.

Mr. DUNN. Mr. Chairman, all I have to say is that I hope we can do something to benefit the laboring man at this session of Congress. We did not do much the last session, although we made an effort, and the law that we suggested was enacted. I was wondering what possibility there was of their doing the same thing with this, if it becomes law, just as they did with the N. I. R. A.

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Mr. GREEN. You will recall, Congressman, that at the last session of Congress we were making some aggressive headway in our 30-hour-workweek bill, and so on. Then, at the last moment, they passed Public Resolution No. 44, which provided for the creation of a board. Now we come back to Congress with our complaints. This Board, set up by Congress, was intended to function properly. But we find it has not functioned and it cannot function. We have learned in the school of experience that something more must be done and that is the reason why we are asking for the enactment of this measure.

Mr. DUNN. I am not taking exception to it. I only hope that we can do something that will be beneficial. You mentioned something about the steel industry. In my own neighborhood, around Pittsburgh, you can illustrate what you said. You did not exaggerate one bit. It is really worse than as you pictured it.

Mr. LESINSKI. Mr. Green, for your information, let me say that I placed in the record yesterday data and affidavits pertaining to the organization of company unions in the automotive industry. I happen to have the bylaws for the organizations both in Ohio and Michigan. There are some very interesting affidavits in that group that I presented yesterday.

What is your opinion of the elections in the Detroit area?

Mr. GREEN. In Detroit?

Mr. LESINSKI. Following the Henderson and Lubin report. What is your reaction to that?

Mr. GREEN. I think the answer to the pretended elections which have been held is found in the Henderson report. In that report you will find a terrible indictment of the automobile management and the automobile industry. They found, from an honest examination—I mean the members of the Henderson committee—a vicious spy system, a persecuting espionage system. They found discrimination and discharge. They found coercion through company unions. They found discrimination against men 40 years of age. They found a state of fear that beggars description.

These elections were held by a board that we have repudiated. We officially notified the President that labor would have nothing further to do with the automobile board because it is based upon the ruling made by General Johnson and Mr. Richberg, minority, majority, and individual representation. We would have nothing whatever to do with it.

Now they have gone ahead and held these elections. But our membership were advised to have nothing to do with the elections, to refrain from participating in them in any way whatsoever. We have 176 labor unions established in the automobile industry, with thousands of members. They were advised to refrain from participating in these elections, for we were contending for the application of the election rules laid down by the National Labor Relations Board, that if elections should be held the majority rule should be recognized.

How were these elections held? In the automobile plants, in the departments, within the plants themselves. The workers left their work line, and stepped into a place to vote, under the supervision of the subboss, or the general boss, or the higher boss—all of them

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were there. It was in that environment, in that atmosphere, that they voted, and they knew that when they walked in, the management were there and they knew how the management wanted them to vote. Every vote was a vote of fear and coercion. We hold that it was no election. It was not held under the supervision of the National Labor Relations Board. It was held under the ruling of Richberg and Johnson—minority ruling. Labor could get nothing out of it, no matter what the result of the election was. Labor could get nothing out of it. The Government is paying the expenses of that Board. As I understand it, it is costing the Government hundreds of thousands of dollars. Labor has repudiated it. It cannot function. It is not functioning. It never will function. Why finance a board that cannot function?

Mr. GREEN. The strange thing about it, Mr. Congressman, is that the automobile manufacturers praise that Board, praise it, and I wonder how you will look upon a board that they would praise.

They praise it, but the rubber manufacturers and the steel manufacturers denounce the Labor Relations Board. The thing about it is that the automobile industry got a board that they love, and that they want, and they are going to try to keep it, but they can't put it over on labor, and we won't have it.

Mr. LESINSKI. An analysis in the newspapers which was given out by the manufacturers some time ago stated that the A. F. of L. had less than 5 percent of the total number of employees in the automotive industry. Have you seen that, Mr. Green?

Mr. GREEN. Yes.

Mr. LESINSKI. And, Mr. Knutsen stated that over 40,000 people are employed in his industry who are over 40 years of age. Have you verified that statement or made any effort to verify it?

Mr. GREEN. I have examined the report of the impartial tribunal, the Henderson committee, that indicted the automobile industry. I accept their statement rather than the statement of a person like Mr. Knutsen.

Mr. LESINSKI. Right in that connection, I want to give you my opinion of the Henderson committee.

When I walked into the building where the hearings were being held, Mr. Henderson laid down rules, and they were very stringent, and I thought right at that moment, "Now, here is going to be an investigation that is nothing but a whitewash", and Mr. Henderson did lay down some harsh rules. He would not allow any one to tell about section 7 (a), excepting to tell his own story, as it related to him. That is all he allowed, and yet, when the report came out, it was more wonderful than I ever expected to come out of that committee. In other words, that board was impartial.

Mr. GREEN. Oh, they found the facts, and they made known the facts, and their conclusions are based on facts.

The CHAIRMAN. Mr. Schneider.

Mr. SCHNEIDER. I take it from President Green's testimony that section 7 (a), as at present interpreted, is absolutely of no benefit to labor in the National Recovery Administration. Now, in case that the Connery-Wagner Act is not enacted, or some similar legislation, should or should not the National Recovery Act, in your estimation, be repealed?

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Mr. GREEN. No; I would not go so far as to say that, Congressman. I think that would play too much into the hands of the powerful employers of the country, for, even though section 7 (a) has failed along the lines that I have stated here this morning, nevertheless, there is a moral benefit to it, and, perhaps, we will find that when the circuit court of appeals, say, for instance, in Cincinnati, passes upon the application of the rubber manufacturers for a permanent injunction to restrain the National Labor Board from holding an election, that section 7 (a) might be given a new meaning. We are hoping that even the Supreme Court of the United States will interpret section 7 (a) much differently than this judge, Judge Neal, over in Delaware. We can't believe that that decision will stand. So that, it may be that when important judicial decisions are rendered that section 7 (a) will be made more real and more vital. We are hoping that it will, and if it is why, we will be benefited if it is continued as part of the National Recovery Act.

Mr. SCHNEIDER. But, if it is not interpreted beneficially to fair play for labor, and it continues to be administered as in the automotive industry, wherein the employer employs an army of spies and uses ruthless and coercive methods to intimidate labor into slavery, and as the absolute dictator, where all of the conditions of the industry, then, of course, labor cannot have any hope of getting anything, nor can the public, out of the National Recovery Act.

Mr. GREEN. Well, so far as collective bargaining is concerned, no, but there are still some beneficial features in the National Recovery Act, such as the abolition of child labor, minimum rates of pay, and maximum hours. Those are benefits that I think should be continued.

Mr. SCHNEIDER. Well, child labor is not a considerable factor in the automobile industry.

Mr. GREEN. No; but it is generally throughout the Nation.

Mr. SCHNEIDER. Generally?

Mr. GREEN. I think, of course, that is a great achievement, abolition of child labor, as we have brought it about under the National Recovery Act, and there are those benefits that we must keep constantly in mind, and the minimum rates of pay established under these industrial codes and fair practices have benefited millions of poor, submerged, underpaid workers that nobody could help. That has done that much for those people.

Mr. SCHNEIDER. But, do you not find it very difficult to reopen these codes at the present time?

Mr. GREEN. Terribly difficult.

Mr. SCHNEIDER. The minimum is established and the maximum is coming down and wages are being brought down, and there has been a reduction in wages in many of these industries. Now, unless labor can enforce the reopening of these codes and increase these minimums so that they will be increased in accordance with the increased cost of living, labor is going to be enslaved until, and unless they have collective bargaining, and we are finally going to get down to a flat minimum wage applying to all of the workers in industry. That, certainly, is not going to be conducive to an orderly and peaceful condition in industry.

Mr. GREEN. No.

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Mr. SCHNEIDER. However, the codes, to a certain extent, do hold the worker on the job and prevent him from his right of joining unions and collective bargaining. Here in the automobile industry is a monstrous bureaucracy built up that is absolutely in control of those who control the industry, who dictate the prices of the products the consumer buys; they set those prices, and they also set the prices of wages, they dictate the wages. It is machinery that smacks of Fascism.

Mr. GREEN. Congressman, my attitude towards the National Recovery Act is this, that the whole measure should be carefully examined, and that which is good should be retained, and that which is bad should be eliminated, and that the administration of the National Recovery Act should be improved so as to meet modern requirements. Our complaint is largely because of the administration. For instance, when the automobile code expired, we appealed for a public hearing so that we could present our recommendations for changes and improvements, but the Automobile Code was renewed without any public hearing. We complained to them bitterly, we complained about that bitterly, and that is true of most all of the industrial codes of fair practices, except in those industries where the workers are organized and are strong enough to make a deep impression.

However, these evils, to which you call my attention, exist, and they must be corrected, but the good features of the act I think should be retained.

The CHAIRMAN. If the gentlemen will yield right there, I have a perfect example of what you said. A hearing on the Boot and Shoe Code was announced after they put up a fight and holler. The mayors from New England towns came up here, and went down to the hearing, and we all went down and voiced our protests at the terrible conditions in the shoe industry, and they decided to open the code up again, and then the code authorities, those from the employers, refused to open the code up again.

In other words, they are bigger than the N. R. A. itself. They had a meeting yesterday or the day before yesterday, that is, the N. R. A. had a meeting, to decide whether or not they would open the code, and they did not decide anything. I am now waiting to see what they do, and then I am going to protest directly to the President if they do not open the code.

In that connection, we reported a bill out of this committee last week, the Connery bill for equal labor representation on all Government boards and codes having to do with the betterment of the workers, and if we do not get any action on that bill, and that bill has been reported favorably by this committee to Congress—if we do not get any action on this bill, then when the Ways and Means Committee brings in the N. R. A., I will offer the provisions of this bill as an amendment to the N. R. A. to provide for equal labor representation on the code authorities.

Mr. SCHNEIDER. How long have you been trying to get that code reopened?

The CHAIRMAN. Over a year. Mr. Dunn, of Mississippi.

Mr. DUNN. Fundamentally, Mr. Green, the A. F. of L. is not opposed to the N. R. A. basically?

Mr. GREEN. No.

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Mr. DUNN. But simply to the administrative clauses in it?

Mr. GREEN. We complain about the errors in administration, and we complain bitterly because labor has not been accorded its place in the administration of the National Recovery Act. We insist that labor be represented upon administrative boards and upon Code Authorities. If we were on that code authority we probably would be able to do something.

The CHAIRMAN. We would try to do something anyway.

Mr. GREEN. But it has kept us out of the picture in that respect. We are in accord with the fundamental provisions of the National Recovery Act.

Mr. DUNN. Yes. Mr. Chairman, I want to direct this statement to you: I hope you hurry this bill through, myself. I hope that we can get through with it just as quick as possible and get it into executive session and get it out of here, get it reported out favorably.

The CHAIRMAN. Yes. We expect to conclude our hearings a week from Friday. The reason for that is that Miss Perkins could not come in until a week from Friday. Mr. Emery will be in a week from Thursday. Miss Perkins will close the hearings on Friday of next week. Then, whatever the committee sees fit to do, we will do at that time. Mr. Marcantonio.

Mr. MARCANTONIO. I am in favor of this bill, and I believe practically every member of this committee is. However, as a practical proposition, Mr. Green, you are undoubtedly familiar with the conditions that exist on various Government projects that are being operated in this country. I understand on some of these Government projects that the workers owed the commissary money at the end of the month, rather than having any money coming to them. What good are these laws going to be to labor in general if you are going to have the Government competing with private employers at rates of wages which are practically reducing the American worker to the status of a coolie? What is the attitude of labor on the Government projects, and what is labor going to do to see to it that the hundreds of thousands of workers who are being enslaved on these various Government projects are protected? What protection are those workers going to get?

Mr. GREEN. Congressman, we have that very situation in mind. First of all, we want to make it possible for these workers to organize, and then, if necessary, bargain collectively with a representative of the Government.

Now, that is the first thing. At the present time they are working as individuals. They can only be heard as individuals, and I know that there are a great many wrongs existing in these Government situations and on these Government projects that ought to be righted.

Now, consequently, that was just exactly what we had in mind when we made our fight here last week or ten days ago for the prevailing rate of pay in the Public Works relief bill.

Mr. MARCANTONIO. Pardon me right there, Mr. Green. Do you believe if the Russell amendment, which was adopted, cures the evil of which organized labor complains, or do you think that the Russell amendment was just camouflage?

Mr. GREEN. That means nothing to us, and that is the reason we opposed it. It still provides that the rates of pay for all of these

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millions of workers who may be employed, outside of a small percentage on building construction, where permanent buildings are erected for the departments of the Government, will be paid the rates of pay fixed, irrevocably fixed by someone.

The CHAIRMAN. There is no break-down in the bill at all in reference to trades, and there is no allocation given in that bill in reference to any appropriation for building, so that the amendment means nothing.

Mr. GREEN. Only permanent buildings erected by departments of the Government, and then the Bacon-Davis Act will apply to those buildings, to building construction carried on by other activities, emergency boards, and organization of the Government, and cities, towns, villages, and communities throughout the land will be subject to security wage, whatever that might mean.

Mr. GRISWOLD. I was on the committee 3 or 4 years ago when we were holding hearings, and at that time Mr. Green's organization presented affidavits here before the committee, I think some six or seven of them, and there was an affidavit from one of the Government employees who worked for $1.20 an hour on public works, and at the end of 10 days he owed the contractor $1.75.

The CHAIRMAN. That is right.

Mr. GRISWOLD. I migh suggest to him further that today with the Davis-Bacon Act and the prevailing wage features of it on Government buidlings, as long as we have our present system of subcontractors, they will do as they have done.

For example, when they were building the veterans' hospital at Marion, they were paying some of the workers 75 cents an hour when the prevailing rate for that work was $1.20 an hour. Painters were doing work for as low as 40 cents an hour. They will continue to do it just as long as you do not do something to cure that.

Mr. MARCANTONIO. In that connection, on the Mount Carey project now there is no labor on the project that does not owe the commissary money at the end of the month. My point is even if labor does attempt to bargain collectively on these Government projects, the point is even if we pass the $4,000,000 bill, giving the President authority, some person whom he delegates with authority to fix a wage, fixes that wage, and that wage is fixed by law and has the sanctity of law.

The CHAIRMAN. If the gentleman will yield there, I may say this: That we had up what is known as the "Metcalf-Connery bill", which covered all public works of the Government. It was vetoed by President Hoover, but it passed the House and the Senate. The next step finally was that some of the building trades said they did not want a predetermined rate of wage, that they were afraid of it, and afraid of its consequences. As a result of that the bill was vetoed. Now, we might suggest to the Federation that we might try something on that line, or something akin to it. The defeat of the McCarran amendment and the measure which I offered in the House, and which Mr. Wood took care of in the late hours, and the citizenship preference, and all of that, will handicap us greatly in getting any measure like that through the House, for the reason that they will say we defeated that in the McCarran amendment, but I was going to say, Mr. Green, that it might be a good idea if the Federa-

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tion would offer or draw up some sort of a bill along the lines of the Metcalf-Connery bill which would leave out what they did not want, in order to get at this problem.

Of course, right away the trouble was, Mr. Green, and I went through it all, and I know what it was, the building trades were afraid of the predetermined wages. If we could get something along that line I would be glad to offer that bill again in the way the Federation would want it.

Mr. GREEN. We tried to compose the differences we found in the building trades organizations on that particular point, but you know it was difficult to do it.

The CHAIRMAN. If the Federation would go along this line and take the original Metcalf-Connery bill and look it over and give me an idea of what they would like, I would be glad to offer that bill again, and we might get somewhere with it before the end of the session, but, of course, the defeat of the McCarran amendment and this other proposition puts a terrible handicap on us. I will say also, Mr. Green, for your information, that Mr. Wood and I got together in the House after talking it over with this committee, and we offered two different measures, and, of course, one we offered was the McCarran amendment, and the one we had offered was to take care of the 30-hour week on these projects, which was already in the law, and the preference of citizens, and all of that. If we had had a roll call, we would have won on both of them.

Mr. GREEN. Yes.

The CHAIRMAN. It was too bad, because we only lost by 28 votes.

Mr. GREEN. I knew of that.

The CHAIRMAN. That would have had a tremendous effect on the Senate, and I think we could have won the 30-hour week. I will be glad to do anything along that line, and to offer a bill along those lines.

Mr. GRISWOLD. On some of these projects, we had men getting 10 cents an hour, and the fellows owed the contractor $1.50 at the end of his 10 days, and another one owed $1.75 at the end of his 10 days' work.

The CHAIRMAN. And slept in a tent, and we had all of these fellows on Government work.

Mr. GRISWOLD. We had them on Government work right at West Point, N. Y.; they were being paid $6 or $7 a day, and there was a kick-back of $4 on it.

Mr. MARCANTONIO. Before you close these hearings, Mr. Chairman, I wish you would recall Mr. Rority. He has made a study of those conditions as they exist on Government projects.

Mr. GREEN. I heard that. Who was that?

Mr. MARCANTONIO. Mr. Rority. He is a newspaper man, and he has made an investigation of all of these conditions.

The CHAIRMAN. We would like to close a week from Friday, and get some action on the bill.

Mr. MARCANTONIO. I think we can get him here by then, Mr. Chairman.

The CHAIRMAN. It is not before the committee in this bill. I will be glad to offer another bill on that, and then we can hear Mr. Rority. Mr. Gildea.

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Mr. GILDEA. As to the Townsend plan. It is not as crazy as they tell you it is. It is not what they say it is. We won't need any $24,000,000,000. If we raise $12,000,000,000 by this measure, that would put 10,000,000 men to work for a whole year. On the question of the cost of this measure, a sales tax of 1 cent, if your income is $100 a month, all it can cost you is $1, and the thing can be understood. It is not impossible to understand it.

I would like to see if we cannot get together on a policy both as concerns working conditions, the 30-hour week, and everything else.

In this particular bill, in section 9 (b), the words "employer unit" should be stricken out.

The CHAIRMAN. On what page is that?

Mr. GILDEA. Page 10.

The CHAIRMAN. Page 10?

Mr. GILDEA. Yes. It is just simply another company union.

The CHAIRMAN (reading):

> The board shall decide whether, in order to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

Mr. GILDEA. Yes, Mr. Chairman. I think the words "employer unit" in there should be stricken out.

The CHAIRMAN. Weren't they thinking of the constitutionality of that? If the majority of the plant voted for an employer unit, they would have to recognize them in their collective bargaining.

Mr. GILDEA. But, it still permits of that interpretation that I see put on section 7 (a), in that it still permits a company union.

Mr. GREEN. Yes; because we were advised by employers, or not by the employers but by attorneys, that you could not eliminate from the measure the rights of the workers to organize into what they call independent unions. What we have maintained is this: That if you will give the workers the opportunity to vote and if the principle of majority rule is recognized, we can take care of that situation. What we are protesting against is that we have not been given that right, that is the workers have not been given the right to vote either as a craft unit, a plant unit, or other unit. They will not permit them to vote in order to determine that. The employer sets up a company union and then insists upon dealing with them as the collective bargaining agency for the workers. We can wipe it out in our judgment. If the company union is imposed, we can wipe it out if the workers are given the right to wipe it out, just as they did it in the railroads.

Since the Railway Act passed last winter, Mr. Congressmen, the company union has been wiped out on the Union Pacific, and also on the Missouri Pacific, and I do not know how many other railroads. There have been 60 some roads, because the workers agree we can write them on to the new labor act and in most of those cases it killed those company unions.

Mr. GRISWOLD. May I suggest this, Mr. Green, that for the first time you gave the company union legal status in United States law under the amendments to the Emergency Railway Act.

Mr. GREEN. Yes; they would come here and insist upon striking. Why not outlaw the company unions in that respect, make it illegal.

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and then they would say probably we would be asking something unreasonable, but we are asking that we be given the right to vote, and we will attend to the company union.

Mr. EAGLE. Merely the exercise of the employee's right in accordance with the President's executive order?

Mr. GREEN. Yes; the exercise of the employer's right in accordance with the President's Executive order. For instance, Mr. Congressman, the Brotherhood of Railway Conductors, the Brotherhood of Railway Trainmen, and the Locomotive Engineers, and the Locomotive Firemen, none of them are a part of the American Federation of Labor. They are independent unions, and if they want that independent union, they have a right to have it.

Mr. GRISWOLD. My understanding was this: It was the shop crafts and other members of the American Federation of Labor which had the trouble with company unions.

Mr. GREEN. Yes.

Mr. GRISWOLD. You never heard of a fireman, a brakeman, or a conductor belonging to a company union?

Mr. GREEN. Yes; on some roads.

Mr. GRISWOLD. I would like to know what roads——

Mr. GREEN. I have been told——

Mr. GRISWOLD. Where any members of those three crafts belong to the union.

Mr. GREEN. I am not sure, but I have been told that they do on, I think, the Santa Fe, didn't they, Mr. Congressman?

Mr. WOOD. Yes.

Mr. GRISWOLD. The Santa Fe Railroad has contracts with the four brotherhoods.

Mr. GREEN. There are some of the crafts that are members.

Mr. GILDEA. Mr. Chairman.

The CHAIRMAN. Mr. Gildea.

Mr. GILDEA. On unfair labor practices, I would like to add another clause, to define as an unfair labor practice discrimination against any member of a union who oversteps what the union organization might think is sound, and as a disciplinary measure he is denied membership, and, consequently, loses his work, his job. I would like to put in as an unfair labor practice any discrimination against any member of the union.

Mr. GREEN. You are getting into deep water, perhaps, into details that could not be carried out in a measure like this.

The CHAIRMAN. Mr. Griswold, had you finished?

Mr. GRISWOLD. No; Mr. Chairman, I would like to suggest one thing: I presume that your organization has been more or less opposed to this in the past. However, in the act they suggest majority representation, a situation that is retained.

Mr. GREEN. Yes.

Mr. GRISWOLD. Then, you want to get to the place where you will deal with the majority and leave out a minority in the making of contracts and in the handling of individual grievances even, but I suggest that in many of the train services and in brotherhood railroad contracts they have a so-called "percentage clause", whereby you must deal through the organization that has the percentage of membership or not deal at all.

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Mr. GREEN. Well, that is the principle embodied in here, collective bargaining.

Mr. GRISWOLD. But, you did not concede that at that time.

Mr. GREEN. Yes.

Mr. GRISWOLD. Under this you say the same thing. You say at present they may go in and deal with the minority and representatives of the minority.

Mr. GREEN. No; not in collective bargaining for the settlement of wage scales and conditions of employment with the agency. This bill provides that the agency selected by the majority shall be the bargaining agency for all the workers. That means that if the workers, if a majority of the workers shall select a union, that union shall bargain with the employers for all the workers. Now, the minority can't bargain collectively.

Mr. GRISWOLD. But, as a matter of fact, the minority does bargain.

Mr. GREEN. Under the present arrangement. That was set up by this decision on this interpretation made by Mr. Richberg and Mr. Johnson.

The CHAIRMAN. That is what we said, that that would be interpreted that way.

Mr. GREEN. We interpret that to mean that they may only take up grievances, not bargain collectively on the items of wages, hours, and conditions of employment, but grievances arising under the terms of the contract already entered into.

Mr. GRISWOLD. We are not talking about that same thing right now. Your grievances are not under the contract. Here I am, and I have been required to work some time and probably I feel that I have not gotten proper compensation for the overtime which I have worked, maybe time and a half or double time, and it might be that the grievance would not be handled through your regular channels, under your present clause the organization that had the majority percentage.

Mr. GREEN. Yes.

Mr. GRISWOLD. Your bill does not provide for that sort of a thing.

Mr. GREEN. It does provide, as I understand it, that the representatives of a majority of the workers, and the bargaining agency must be selected by a vote, a percentage as you have got it, a percentage of the workers, a majority, and that that shall be recognized as the only bargaining agency for all of the employees in collective bargaining. Now, then, after you have voted for collective bargaining and arrived at your contract under which you work, grievances will arise. Now, then, if the individual wants to take his grievance up direct with the employer, for instance, as you say, on overtime, and he wants to go to the manager and make a complaint, to take up his grievances about overtime, we accord him that right under the provisions of this bill, but he would not be accorded the right to bargain collectively for a change in the wage schedules affecting him or anybody else.

Mr. GRISWOLD. I think I thoroughly understand your position, but you do not understand mine, that at the same time that that man goes and bargains individually and not through the established procedure, and the established organization, that man has got to break down your system by doing it alone.

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The CHAIRMAN. That is what I am afraid of.

Mr. GREEN. Let me tell you about that, about an industry that I have had experience with, and experience is a pretty good teacher. We have worked out wage agreements between employers and employees in a number of the industries throughout the country. Those agreements have been arrived at as a result of experience. Now, some of those agreements provide a step-by-step method, which must be followed in the settlement of grievances, and I have in mind one now that I have been connected with for 20 or 25 years, namely, the mining industry, covering 500,000 or 600,000 miners of the country. It provides that when a grievance arises between the employer and the employees that the employee, the aggrieved, must take up his grievance with the management first and try to secure a settlement. If he fails to secure a settlement, then he refers it to the mining committee, and then the mining committee, representing all of the workers, takes the grievance up with the management. Then, if they fail to settle it, that goes then to a tribunal set up under the provisions of the act. But, the originator of the grievance must first take up his grievance for adjustment to the management, and then if he refuses to deal with the individual, it is referred to the mining committee, and if the management refuses to deal with the mining committee, it goes to the tribunal.

Mr. GRISWOLD. All right, let us get at it this way, then; we will presume that the individual does not belong to the established organization.

Mr. GREEN. He belongs in the mining industry.

Mr. GRISWOLD. But, you have plenty of them in the A. F. of L. that do not.

Mr. GREEN. Yes.

Mr. GRISWOLD. Suppose he does not. Then, are you going to allow the established organization to handle or adjust the claim of this outsider, or are you going to allow him to handle it the way it is handled in many instances, where he goes to the management, and because he does not belong to the organization, and because the management is out to get the organization they give him a better settlement than they would give the representative of your organization?

Mr. GREEN. Yes. That is a policy pursued by management, and that is the reason why we want to outlaw the company union, by establishing what is an unfair labor practice.

Mr. GRISWOLD. I am with you on outlawing the company union.

Mr. GREEN. Yes.

Mr. GRISWOLD. The thing I am wondering is whether or not under the procedure you are taking you will outlaw it.

Mr. WOOD. You can't pass a law that will abridge a man's right to settle his own contracts.

Mr. GREEN. This is a broad law, susceptible of very broad interpretation, which is the reason why I simply wanted to reserve the right to offer an amendment to this section which has just been referred to.

The CHAIRMAN. That ought to be fixed up. Had you finished, Mr. Griswold?

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Mr. GRISWOLD. I have only one thing more. I would like to suggest that I am glad Mr. Green has modified some of his opinions of the N. R. A.

Mr. GREEN. On what?

Mr. GRISWOLD. In the opinions that you give us here this morning, I notice that conditions respecting grievances now are under the N. R. A., I said the same thing would happen when I voted against the N. R. A. on June 18, 1932.

Mr. GREEN. We blame that on errors of administration.

Mr. GRISWOLD. Those errors of administration are what I pointed out at that time.

Mr. WOOD. You have not modified your position on the N. R. A. on anything I know of.

Mr. GREEN. No; I do not say that is a modification.

Mr. WOOD. The fact of the matter is that the American Federation of Labor practically wrote 7 (a), or the things in section 7 (a). I believe that is right, isn't it?

Mr. GREEN. That is right.

Mr. WOOD. When the law was passed which embodied section 7 (a), that is very true, as you have just stated, at the outset that labor hollered great news throughout the Nation, and labor felt and in public mass meetings and otherwise proclaimed we had here and believed that a new Magna Carta for labor had been written.

Mr. GREEN. Yes, sir.

Mr. WOOD. Now, the present manner in which large employers have not only violated section 7 (a) but twisted its meaning to suit their case, not only disillusioned the workers and caused them to be disappointed and discouraged, but it has shaken their faith not only in the laws of the land but it has shaken their respect for the law. and it has likewise shaken their faith in the prerogatives of Congress to enforce the purpose or intent or meaning of the law.

Mr. GREEN. Yes.

Mr. WOOD. I think that is the most dangerous thing about the violation, the violation with impunity of section 7 (a) by the employer. I agree with you that we have come to a point where we must either define the meaning of this section 7 (a) or enforce it, or repeal it entirely, because almost any employee, most any man of the streets, can read section 7 (a) and interpret its meaning, that it means collective bargaining.

Mr. GREEN. Yes.

Mr. WOOD. To me it means to establish the free right of the workers against any misleading by the employer, and to bargain with the employers collectively on the questions of wages, hours, and working conditions. Now, I charge a great deal of this ability of the corporate interests, especially to violate this law, by not only the loose manner of the administration of the law but to the dishonest administration of the law. I agree thoroughly with Mr. John L. Lewis, president of the United Mine Workers of America, when on, I think, yesterday or the day before yesterday, before the Senate committee, in consideration of this bill, I believe, the Wagner bill—the Wagner-Connery bill——

Mr. GREEN. Yes.

Mr. WOOD. When he said that Donald Richberg had sold labor down the river. Now, we have this spectacle, that Mr. Richberg has

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represented 21 railroad organizations as legal adviser for a period of some 15 or 20 years, and at a very fine salary. They have not only given him an ample fee for his services, but they have established Richberg. No one ever heard of Donald Richberg before that, before labor picked him, before organized labor selected him as their legal representative, the 21 standard railroad organizations; and by and through their employment, Donald Richberg became a national character. Then it appeared at the first opportunity he had, he sold labor down the river. Then on February 1, 1934, the President of the United States issued an Executive order which was an interpretation by the President of the meaning of section 7 (a).

Mr. GREEN. Yes.

Mr. WOOD. Following that an interpretation came from the President's legal adviser; and the President appointed Donald Richberg because he had confidence in him, because he felt that Donald Richberg would represent the President of the United States honestly, that he would make his decisions and his interpretations of the law in accordance with its real purpose and intent. In a subsequent interpretation he interpreted the President's interpretation, which, of course, changed the meaning of the President's interpretation entirely. It seems to me that this man has not only now sold his friends, organized labor, down the river, but he is attempting to sell the President down the river.

I would not dignify him by comparing him with Benedict Arnold or Judas, because Judas, after he had betrayed the Savior, became remorseful when he found out what a terrible crime he had committed and in his desperation he committed suicide; but this man is arrogantly stalking across the country now, setting himself up as the dictator. He even sets himself up as a greater authority than the President, as to what Congress meant on the interpretation of the law, and I believe that his machinations have caused us more grief and more trouble and have encouraged the employers in violations. He has connived with the employers in their efforts to defeat the purposes of section 7 (a). I do not ask you whether you believe he is a Benedict Arnold; but what I would like to know—is to get your reaction as to just what you think about the influence the activities of Richberg have had in encouraging employers to continue their efforts to destroy the very effectiveness of section 7 (a).

Mr. GREEN. Well, I have felt that we have been dealing, of course, with a problem that transcends in interest that of the individual. It is above and beyond any individual, and I am trying to present the facts connected with the problem. I do not believe that any individual, Mr. Richberg, or anybody else, can impose his will upon the Government. I do not know why he is permitted to interpret it that way, why he is permitted to do that. What we are trying to do, Mr. Congressman, is to secure a redress of this wrong that we think has been perpetrated upon labor. Now, either the President's interpretation is right, and the interpretation of Mr. Richberg and General Johnson—and I put them together——

Mr. WOOD. Yes.

Mr. GREEN. And the interpretation of Mr. Richberg and General Johnson is wrong, or they are right, and the President is wrong, because you cannot harmonize two conflicting interpretations. Now,

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it appears to me that when that was made clear, when the two interpretations were in conflict, that they could not be harmonized or composed, that some steps ought to have been taken to execute the decision of the Chief Executive of the Nation.

Mr. WOOD. No steps have been taken of that kind that you know of?

Mr. GREEN. No; until the Labor Relations Board established that principle in its decision in the Firestone Tire & Rubber Co. case and the Goodyear Tire & Rubber Co. case and the Duquesne Steel Co. case, and the steel-workers case at McDonald, Ohio.

Mr. WOOD. That is the board of which Mr. Biddle is chairman?

Mr. GREEN. And of which Mr. Garrison was chairman.

Mr. WOOD. Yes.

Mr. GREEN. That board accepted the President's interpretation.

Mr. WOOD. Yes.

Mr. GREEN. And established that labor provides and labor approves the majority rule. Now, we are asking those courts, in this bill, that that be confirmed—make the President's interpretation the law of the land and the decisions and precedents established by the National Labor Relations Board as the law of the land; and if the Congress will do that, then the individual that caused this mess is repudiated and out the window.

Mr. WOOD. I think it is hardly possible for an individual to forestall Congress and the Government in carrying out the law, because the President clearly interpreted the meaning and the purpose of the law, and he also clearly interpreted the meaning of Congress when they enacted section 7(a), and I do have high hope that we will overcome this drastic and unfair decision of Richberg.

Mr. GREEN. Yes.

Mr. WOOD. I feel sure that if we continue on with section 7(a) in the law, as we have in the past, and continue the constant and persistent violation of the law by the employers who do it successfully, I insist that eventually the workers' confidence in the Government and in the law will be greatly shaken or destroyed.

Mr. GREEN. Yes.

Mr. WOOD. I think it is very greatly destroyed right at this particular time from the reactions I get from it.

Mr. GREEN. Yes; it has already created a serious state of social and industrial unrest.

Mr. WOOD. It certainly has. I believe this is the most important piece of legislation that we can pass at this time.

Mr. GREEN. I have said that we consider it of major importance.

Mr. WOOD. Yes.

Mr. GREEN. First of all, it provides for collective bargaining. It defines and establishes section 7(a). It defines and then meets unfair trade practices. It goes as far as it seems possible to go at the moment to prohibit employers from financing and dominating and controlling company unions. Now, then, it provides for, and a rule for, elections. Then it creates a board, and the board is clothed with authority to render decisions, and hear witnesses, to exercise judicial functions, to issue subpenas to witnesses, bringing them into court, and to call for papers and documents, all functions necessary in order that a fair determination of the issues may be arrived at.

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Then, it does not stop there. It provides that the Board may go into court and apply for an execution order, just as the Federal Trade Commission, for carrying its orders into effect. Now, it seems to me, that there are the logical steps of enforcement that are necessary in order to make this act vital.

Mr. WOOD. Now, don't you think that Mr. Biddle's objection to this Board becoming a part of the Department of Labor is based upon the fear, or his belief, that the judicial decisions of this Board will be tempered by the Department of Labor; in other words, being connected with the Department of Labor will deprive the Board of making final judicial decisions?

Mr. GREEN. Of course, I could not interpret the meaning of Mr. Biddle. I have a high regard for him and for his judgment.

Mr. WOOD. Yes; he is a very fine man.

Mr. GREEN. But, I think that great care ought to be exercised by Congress in the adoption of provisions providing for the creation of the Board, which would protect the Board in the exercise of its judicial functions, and will make it absolutely independent and free from review by any power or any authority. That is a matter, or that is a function that should be guarded and protected very carefully.

Mr. WOOD. If it is made a part of the Department of Labor, it will have to be because of the danger of having someone else review the Board's decisions.

Mr. GREEN. That would be fatal. We cannot have that.

Mr. RAMSPECK. Can you have a board that is absolutely independent, and still have it under an executive department?

Mr. GREEN. I suppose that is a matter of opinion, Mr. Congressman, but it would appear that if the Board is created as provided for by this bill, have the members of the Board appointed by the President and not by the Secretary of Labor, but by the President, and that appointment to be confirmed by the United States Senate, that we have taken the first step necessary to the establishment of an independent board. Now, secondly, we place the Board in the Department of Labor, where it may function on independently. I can conceive of a board functioning independently in the Department of Labor, or any department of Government, provided it is clearly established that there shall be no review of its decisions, that this Board's decisions are final, and there is conferred upon the Board, not the Department of Labor, the authority to subpena witnesses, to take testimony under oath, to call for papers and documents, and to go into court of its own initiative, not through any department, but of its own initiative in order to secure enforcement of its decrees.

Now, isn't that independent?

Mr. RAMSPECK. Who would select its personnel other than the Board members?

Mr. GREEN. You mean the employees of the Board?

Mr. RAMSPECK. It would have to have attorneys, experts, and technicians of various sorts.

Mr. GREEN. I have not gone into that, although I had understood that the Secretary of Labor felt that the employees of the Board should be selected by the Department of Labor, but, as I say, I have not gone into that or thought anything about it, because I

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regarded that as a matter of minor detail. I can't see where any arrangement under that would affect the independence of the Board.

Mr. RAMSPECK. Wouldn't it affect it in this way, Mr. Green: That if you had a Board which had no authority to select or discharge its personnel, if you got into a conflict between any Secretary of Labor and the Board over its policies, the Board would be handicapped in carrying out what they thought to be proper policies, because the personnel would hold allegiance to somebody else other than the Board.

Mr. GREEN. Wouldn't that be a question of personnel rather than a policy, Mr. Chairman?

Mr. RAMSPECK. If they could not get rid of the personnel that would not go along with their policies, it would destroy the independence of the Board.

Mr. GREEN. I think that the Board should be given the widest authority to select, or at least to use, the kind of personnel that it wishes in carrying on its work. How that personnel is to be selected, under civil-service regulations or how, is a matter that I would not care to go into. However, there is another thing we are much concerned about, and that is this: That if the Board was established outside of the Department of Labor, that it might mean the disintegration, to some extent, of the Department of Labor itself, because there is a mediation section; there is a statistical section; and there is a research section established within the Department of Labor that would be available for the use of the Board, and could be used if it were within the Department of Labor. If the Board is outside of the Department, it probably would either have to compile that data for its own use, or create a new conciliation and mediation department, or a new statistical department. That is a duplication, and I do not believe that Congress would stand for the expenditure of the people's money in that way.

Mr. RAMSPECK. Is the Railway Labor Board under the Department of Labor?

Mr. GREEN. No; I think it is in the Interstate Commerce Commission.

Mr. WOOD. The Interstate Commerce Commission.

Mr. GREEN. Yes.

Mr. RAMSPECK. Do you know of any instance in the Government of the United States where there is a judicial board under any executive department?

Mr. GREEN. Well, this should not be regarded exactly as a judicial board, although it possesses quasijudicial powers.

Mr. RAMSPECK. Do you know of any situation similar to this where the board is placed under any department? I am asking for information. I do not recall any off-hand.

The CHAIRMAN. The Board of Tax Appeals is under Internal Revenue.

Mr. WOOD. The Alcohol Control Commission is also under Internal Revenue.

The CHAIRMAN. I have a feeling that labor would be safeguarded better if it were out of the Department of Labor, not because of any feeling or anything in regard to who might be Secretary, but I can see what Mr. Ramspeck brings out. In this bill it says the Board

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will appoint their own employees. I can see a great many situations where, if the attorneys or employees appointed by the Secretary were not in harmony with the Board, they could do a lot of harm; they could disorganize the whole situation. Mr. Biddle testified this: That the Department of Labor had cooperated with them in every manner with their conciliation service and mediation service, but, offhand, I would be inclined to favor them being a separate board for the reasons that he states there. I do not think it would interfere with the Department of Labor, because I thing the Department of Labor is going to get bigger and bigger as we go along.

Mr. GREEN. I understand that, but we do not want the Department of Labor dismembered.

Mr. RAMSPECK. No.

The CHAIRMAN. I think they are going to get bigger and bigger.

Mr. GREEN. The Immigration Section is in the Department of Labor and that is a quasijudicial board, inasmuch as it passes upon deportation cases, and all of that sort of thing. That is within the Department of Labor. The Women's Department, or the Women's Bureau, is also in the Department of Labor, and the Children's Bureau, and all of them, so far as I know, have been functioning very nicely and very satisfactorily.

Mr. RAMSPECK. Mr. Green, here is what I have in mind: I have no preconceived opinion about this matter, but, in the final analysis everything in this country depends upon public opinion.

Mr. GREEN. Yes.

Mr. RAMSPECK. If Congress creates this board, and its conduct and its policies and its decisions cannot be justified in the court of public opinion, it is going to be a failure.

Mr. GREEN. Surely.

Mr. RAMSPECK. It has, therefore, to be such an organzation as will be able to justify its decisions in the minds of the people of this country who do not either belong to your group, or belong to the group of management, and that is the biggest part of the country. Up to this time, I am sory to say that public opinion is rather inclined to be against you. I find it that way in my contacts.

Mr. GREEN. In which respect?

Mr. RAMSPECK. Well, they believe that labor makes unjustifiable demands, and, of course, that has worked unsatisfactorily. I do not want to go into details here now, but the press presents the other side of the picture and plays up the things that are detrimental to labor and, in general, public is inclined to look with suspicion on organized labor. I do not say that it is justified, and I do not think it is, but the thought I have in mind is this: That if we are going to set up a board to deal with disputes between management and labor, we must safeguard it in every way possible, so that it will have a fair chance with the public opinion and justify its existence, and to substantiate the positions and policies which it enunciates, and I think that is a question that labor ought to consider very carefully in connection with this question of where the board should be placed. I have this thought about it: At the minute you say it is part of the Department of Labor, that those people who have an antagonistic attitude of mind will immediately view it as an instrumentality of organized labor, which it is not to be, in my judgment,

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and which it ought not to be. I think it ought to be a nonpartisan board, a board which represents the general public rather than the interests of labor or of management.

Mr. GREEN. Certainly, Mr. Congressman, public opinion is the final arbiter in all controversial questions particularly in a democracy.

Mr. RAMSPECK. Yes.

Mr. GREEN. I know that the decisions of tribunals and boards set up by the Government must square with public opinion; otherwise the Board's decisions are bound to failure. But, let us see, here are three members sitting on this Board, the National Labor Relations Board. Of those, one is Mr. Biddle, who comes from Philadelphia, and I think is connected with an old, aristocratic family that is known all over the Nation, the Biddle family. Now, he cannot be charged with being prolabor, pro-organized labor, if you please.

Then, there is Professor Millis from Chicago, who has lived in that academic, educational atmosphere all of his life. He is no member of any trade union, nor could he be considered pro-organized labor.

Mr. Smith, the other member, was formerly a newspaper man, as I understand it, in the State of Massachusetts, and served there as director of labor in Massachusetts. Now, a Board of that kind certainly ought to get the support of public opinion. It is neither of the employers nor of the employees, labor. Now, do you mean to tell me that a Board of that kind could not render just as clear-cut, independent judicial decisions if it were created independently in the Department of Labor as it would outside of the Department of Labor, where its independence would be no different?

Mr. RAMSPECK. My judgment is that putting it under the Department of Labor, even though you created it independently, as you say, would, to a certain extent, with certain people who are not properly informed, create in their minds an antagonism toward its opinions. You have described the present Board, which is both independent and nonpartisan, and which I understand is satisfactory from your viewpoint; is that right?

Mr. GREEN. We believe the decisions rendered by the Board have been fair.

Mr. RAMSPECK. Of course, they have no authority to enforce them, but that is what you are trying to get in here?

Mr. GREEN. Yes.

Mr. RAMSPECK. And, under Mr. Garrison you had the same experience?

Mr. GREEN. Yes; the same experience.

Mr. RAMSPECK. The decisions were satisfactory but the lack of enforcement was the thing against which you complained?

Mr. GREEN. Yes.

Mr. RAMSPECK. This experience has proven that an independent, nonpartisan board will render satisfactory decisions, then why take a chance and disturb that set-up and handicapping them with a label of being a labor board? What we want is the results, not names. That is what I want, and what I think you want.

Mr. GREEN. Yes. What we are wanting is the right which Congress conferred upon labor, made it real and vital and operative, and

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we think it can be done through the establishment of this board, clothed with the authority provided for in this act.

Mr. RAMSPECK. If you create such a board, and make it really independent, then it would be under the Department of Labor in name only. It would be just simply an empty honor conferred upon the Department of Labor and would carry with it, in my judgment, a handicap. I submit this for the serious consideration of this committee and yourself. In my judgment, it would carry with it, to a certain extent, a handicap in that certain people in this country, who are not properly informed, in my judgment, would consider it an adjunct of organized labor as they do the Labor Department. Of course, you know, I come from a section of the country where labor is not as strong as it is here in the East and the North, but that is the reaction which the people who are not directly interested in these controversies have toward the Department of Labor. They consider the Department of Labor is partisan, to start with, in favor of organized labor, and I just wanted you to consider that.

Now, there is one other question I wanted to ask you: You are asking us, as Members of Congress, to give authority, and the sole authority for collective bargaining to a majority of the employees or to persons selected by a majority of the employees, and I am inclined to agree with you that that is the only way to get real collective bargaining. I go further than that and say that, personally, I would not vote for any law which contained a provision that would in any way circumscribe the right of the employees in a given plant to select their own organization, even though they might select a company union.

Personally, I do not think a company union is effective, but if the employees in the organization want it, I think they have a right to have it. I think it is up to you and those associated with you to sell the employees on the fact that an affiliated union can render better service to them. However, this question comes to my mind: You have got internal problems in the A. F. of L. on questions of jurisdiction and craft organizations. What is the A. F. of L. doing to eliminate those situations, which, to my mind, do affect the principle involved in this bill? The point I am getting at is this: Suppose you have in the automobile industry a dozen different organizations, or, we will say, in the steel industry, how are you going to determine the organized majority rule in those cases, unless you organize an industrial union?

Mr. GREEN. That is established in paragraph (b), I think, of section 9, left entirely with the Board.

Mr. RAMSPECK. Left with the Board?

Mr. GREEN (reading):

> The Board shall decide whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

Mr. RAMSPECK. Then, under this bill, as you construe it, the Board could say, if you had a factory, we will say, where there were half a dozen different craft organizations, the Board could say, "We won't use any one of those; you must organize an industrial union."

Mr. GREEN. Yes; they can say whether it shall be a plant unit or a craft unit. That is within the power of the Board to determine,

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just what would be a matter of convenience. For instance, there might be in some plant a group of skilled workers that would want their own representative, one who was acquainted with their problems, trained and experienced, to represent them in collective bargaining. They would hesitate to delegate that power to some untrained group. They would appeal for an election in this unit. Well, if they could present convincing facts that would justify their position, the Board is given authority to say: "Now, you hold an election in your unit and select your representatives and we will recognize the representatives selected by a majority of your unit." It confers broad powers, elastic powers, on the Board so that they can meet any unusual situation that might come up in a practical way. It contains those provisions in order to make it a perfectly workable measure.

Mr. RAMSPECK. Is it your construction under a situation such as I have described, that the Board can say "We won't recognize any but a single union."

Mr. GREEN. Yes; it could say that. The Board could lay that rule down.

Mr. RAMSPECK. That would obviate the objection I have had to the power conferred in that bill.

Mr. GREEN. You see that?

Mr. RAMSPECK. Yes; I see what you are talking about now.

Mr. GREEN. A plant unit.

Mr. RAMSPECK. Where a situation like this arises, and you have a group of employees who want to get into a union and there are two different craft organizations that claim jurisdiction over them, but neither one will let the other one have them, and at the same time neither one will agree to let them have a separate organization, what do you do in such a case? You have that situation in reference to the special delivery messengers in the Government service, with the letter carriers' organization. The special delivery messengers have an organization, they wanted to affiliate with the A. F. of L. The letter carriers won't permit them to go to the A. F. of L. and won't consider their affiliation because of the condition of the letter carriers, won't take them into the letter carriers. In bringing that up, I am not trying to put you on the spot.

Mr. GREEN. You brought up a case that I do not know anything about.

Mr. RAMSPECK. Oh, you have forgotten about it, because I have a letter here you wrote.

Mr. GREEN. You probably have.

Mr. RAMSPECK. I have a photostatic copy of a letter wherein you decline to let them come before the executive committee.

Mr. GREEN. Yes.

Mr. RAMSPECK. But, as I say, I am not trying to put you on the spot about that. I just think if we are going to legislate on questions that deal with employees, we ought to consider those things.

Mr. GREEN. I judge, perhaps, that these people you refer to want a separate organization of their own whereas jurisdiction has already been granted the letter carriers over this group. You say the letter carriers won't take them in.

Mr. RAMSPECK. That is what they say.

Mr. GREEN. I don't believe that.

Mr. RAMSPECK. The president of the organization says:

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I have even suggested this: Put the organization right under the letter carriers, absorb ours lock, stock, and barrel, which he has refused to do, informing the committee that it was a dog-eat-dog affair, and that they were strongest.

Personally, I do not approve of that sort of conduct on the part of any labor organization, and I do not think you do, although I am not going to ask you to express an opinion on the record.

Mr. GREEN. We have problems just the same as any other organized group has, Mr. Congressman. We are trying to work them out on the basis of fairness and justice, but I imagine you could find a whole lot of people all over the country that could bring here a lot of problems.

Mr. RAMSPECK. I know you have plenty of them.

Mr. SCHNEIDER. That situation arises out of the fact that these workers are largely temporary workers, and have no permanent positions.

Mr. RAMSPECK. They are paid on the piece basis; that is true.

Mr. WOOD. The fatal mistake, Mr. Ramspeck, is that you have not presented all of the communications on both sides. If we got all of the communications from both organizations, it might throw a different light on the situation.

Mr. RAMSPECK. Maybe that is so.

Mr. WOOD. The fact of the matter is the employees of special delivery and the letter carriers might not want to come into the A. F. of L. by joining the letter carriers' organization.

Mr. RAMSPECK. They say they do. But I want to get away from that. We have a letter from Mr. Marion Smith, of Atlanta, who is chairman of the regional labor board there. He sat on the cotton textile board, of which Governor Winant at that time was chairman. He is a son of the late Senator Hoke Smith, who served twice as Governor of Georgia, and once as Secretary of the Interior under President Cleveland. I want to say for the sake of the record that Mr. Smith has no connection with labor, and, so far as I know, was never interested in the subject until he agreed to serve as neutral chairman, or nonpartisan chairman of the regional labor board. I wrote him a letter on March 16, and sent him a copy of this bill, and asked him for his opinion about it. I wrote him as follows [reading]:

A few days ago I read with great interest a statement by you in regard to the relations between employer and employees which was published in the Journal of Labor in Atlanta.

I recently met former Governor Winant, and he spoke very highly of your service on the textile labor board with him.

Appreciating the exprieence you have had and the study you have made of the relationship between the employer and employees, I am sending you herewith a copy of H. R. 6288, which is a duplicate of the Wagner labor disputes bill. The House Committee on Labor, of which I am a member, is now having hearings on this bill.

I would personally like very much to have your reactions to this proposal. If you desire that the statements you may give me to be regarded as confidential, of course I shall so treat them.

This is a very important proposal and one that may have far-reaching consequences if it should be enacted into law, and it is for that reason that I am seeking information from you, and because of the fact that I feel that you have had an experience in the matter which few people have been privileged to have.

With kindest regards, I am.

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In his reply he states this, and I want to read it to you:

I have your letter of the 16th. I will be glad to write you what I think about the labor disputes bill. I do not know that my opinion on it will be a matter of any particular interest, but you need not treat it in confidence.

I have had a good deal of experience with labor disputes from serving as chairman of the regional board here and through my connection with the cotton textile board, of which Governor Winant was chairman.

I have reached two very definite opinions which are the basis of my belief that something like the Wagner bill should pass. To argue these two conclusions would take more space than is permissible in a letter. I can, however, state that I believe anyone who is really familiar with the subject at first hand would agree with me. They are:

First. Adjustments of conflicts of interests between labor and management ought to be settled by conference, discussion, and adjustment, and reasonable compromise. This is the traditional American way of adjusting conflicts of interest rather than fighting them out to the bitter end. If this principle of discussion and adjustment is not followed in the field of labor relations there are much more drastic and disastrous conflicts which may arise. But if issues between labor and management are to be settled by discussion and adjustment the two interests must meet on a fairly equal basis. In other words, a reasonable organization of labor is a condition precedent.

Second. There is no doubt about the fact that there will be an extended organization of labor in this country. The extension of the organization in new fields at first produces a considerable amount of conflict. I would like to see this extension of the organization take place with as little conflict as possible. I believe a recognition and protection by law of the right to organize will reduce the amount of conflict as the inevitable extension of the organization takes place. I also believe it will tend to leave the resulting organization in relatively more conservative hands; that is, with men like William Green in national affairs, and Steve Nance, for example, in Georgia. In my opinion the Wagner bill will tend in this direction and in the long run, therefore is a conservative rather than a radical measure.

I have one suggestion as to the measure, and if you agree with me, I believe it would be a great constructive amendment, namely:

The bill as drawn puts obligations on management only, and it is to this extent fairly subject to the criticism that it is one-sided. The right of labor to collective bargaining should, I think, be recognized as carrying with it the obligation to exhaust the machinery of collective bargaining before resorting to more drastic steps. I think the bill should contain a provision that where management recognizes the organization of labor for collective bargaining there should be no resort to strike until after some reasonable effort, to be defined by the bill or to be left to the board, had been made to settle the differences by collective bargaining and that the Board should be given authority to enforce the provision.

I have read that letter to you for the purpose of asking your opinion as to the suggested amendments.

Mr. GREEN. Which do you mean?

Mr. RAMSPECK. The last paragraph there.

Mr. GREEN. Well, the legal method outlined by Mr. Smith for the settlement of disputes has been a part of the general policy that has been pursued by labor organizations where they have been accorded the right to bargain collectively. That is the instrumentality set up for the settlement of industrial disputes, and it must be used and exhausted before any strike occurs. A strike would be a matter of last resort, not a matter of first resort. That is what collective bargaining means. Collective bargaining means the settlement of disputes through collective bargaining, if possible, and a resort to a strike or a lock-out only after the collective bargaining procedure has been exhausted. Now, I do not understand how you could put that in this bill, because we are not dealing with a question of either arbitration or compulsory arbitration. I do not think that is re-

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ferred to in the bill. Of course, we oppose very violently any plan of compulsory arbitration, but I am not sure whether this bill provides that the services of the National Labor Relations Board may be used for arbitration purposes where both sides agree.

The CHAIRMAN. I think that was the old bill.

Mr. MARCANTONIO. It was in Senator Wagner's bill.

Mr. GREEN. Then, it provides for the settlement of disputes by arbitration. Of course, we favor that plan of procedure. I doubt if an amendment could be written into the bill embodying that, but I would say that in spite of our traditional policy.

Mr. RAMSPECK. I know it is, insofar as labor organizations in my district are concerned. They do everything they can to prevent strikes.

Mr. GREEN. Yes.

Mr. RAMSPECK. I am not going to press the point, but I am going to send you a copy of this letter and ask you to consider it with reference to possible action on the bill.

Mr. GREEN. Ninety percent of the strikes that have occurred during the last year and a half have not been because of failure to settle disputes that arise but because of an attempt to enforce section 7 (a). That is what has inspired 90 percent of the strikes.

Here is one further point I want to make that you refer to, and that is this: That this present board has been an independent board. I think it is functioning independently. I think we all agree to that, but, notwithstanding its independent character, the employers of labor refuse to abide by its decisions.

Mr. RAMSPECK. Of course, it has no authority to enforce them.

Mr. GREEN. Is it not sort of a universal rule, and recognized as such, that when the plaintiff or the defendant comes into court and submits a case that it is presumable that they will abide by the decision?

The CHAIRMAN. Yes; I agree with you.

Mr. GREEN. They come into court and they present their cases. In every one of these cases they came in and presented their agreements and offered evidence, and the court decided against them, in these election cases, and they said, "No, we will not abide by the decision of your independent body", after coming into court. Now, what kind of a board must we set up that will overcome that situation, or where must we put it to overcome that situation?

The CHAIRMAN. I do not think it makes any difference where it is as to that particular point. I think the defect in the board is that it has not any authority to enforce its decisions. I do not think any board is any good without that authority.

Mr. GREEN. That is all right where you serve notice, I am not coming into court, and I am not going to appear and will not abide by your decision, but when you come in and by implication at least, accept the decision of the court and I present my case, my argument, and my facts, the answer is if you give a decision the way I want it, I will abide by it, but if you do not, I will go out, and I won't do it. That is what they have done.

The CHAIRMAN. That is what has happened.

Mr. RAMSPECK. That is what the court has declared and they have to take it.

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Mr. GREEN. That means they have to be made to do the thing.
Mr. WOOD. I think you are absolutely right on that.
The CHAIRMAN. Have you finished?
Mr. RAMSPECK. Yes.
Mr. GREEN. Yes.
The CHAIRMAN. We thank Mr. Green for his appearance before the committee, and we are always glad to have the president of the American Federation of Labor with us.

STATEMENT OF EDWARD KEPHART, PRESIDENT OF BUCKEYE LODGE, AMALGAMATED ASSOCIATION OF IRON, STEEL, AND TIN WORKERS, McDONALD, OHIO

Mr. KEPHART. Mr. Chairman and gentlemen of the committee, I should just like to answer a few questions. I am not going to make the bulk of my statement now, but I should just like to answer a few of the questions which have been brought up here.

As you know, I am president of the union in a plant which is a subsidiary of the United States Steel Corporation, and I am very familiar with the labor policy there, due to the fact that we have pursued every amicable means of attaining collective bargaining with the United States Steel Corporation. One of those plants in our district was mentioned by President Green. We have a case now before the Circuit Court of Appeals in Cincinnati.

The CHAIRMAN. You are with the McDonald concern in Ohio?

Mr. KEPHART. Yes; the McDonald plant at McDonald, Ohio. I would just like to answer offhand a few of the questions that I have heard brought up here.

One of the gentlemen offered an axception to the term "employer unit" in this bill. I would like to explain how that is used in the steel industry to defeat the proposition of collective bargaining in the individual plants. I work in what is known as the Youngstown district of the Carnegie Steel Co. The Youngstown district has three plants in that district. One of them is a steel making plant, another is an old-fashioned steel rolling plant, and ours is a new type of steel rolling plant. The three are absolutely individual, separate, and distinct units. As a matter of fact, our plant is some 5 miles away from these other plants; nevertheless, under the employer representation plan, or company union, it is administered through the district. That is, through the three plants. It is not administered through the individual plants and there is no possibility whatever of a group in either of the plants acting independently. As a consequence, this situation has arisen: At our plant we have a great many young men, and at the old plants the bulk of the employees are men who are 40 years old or more. Consequently, we organized a lodge of the Amalgamated Association at our plant to attempt to obtain collective bargaining for the members or for the employees of the plant. The first question that came up in the dealings with the Carnegie Steel Co. was that they could not deal with us as a unit due to the fact that they are in a plan, the company union employer representation plan, which was so arranged that it was by districts under the supervision of a general superintendent. In our case before the Steel Relations Labor Board,

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naturally, that was one of the questions that came up, was it possible for this unit representation to be the plan, or how was it to be arranged?

The board in its decision confirmed the view that it could be by plants, and not by districts through local arrangements.

The CHAIRMAN. Were you in favor of that or against it?

Mr. KEPHART. We were for it. You see, here is the way we are set up: Our plant employs 2,000 men, the plant at Youngstown, the steel-making plant, employs 4,000 men, and the old-type steel-rolling plant in Youngstown employs 700 men.

The CHAIRMAN. Yes.

Mr. KEPHART. In other words, at the old plants there were 4,700 men, and at our plant there were 2,000 men.

The CHAIRMAN. Yes.

Mr. KEPHART. Under the employee representation plan they elected 21 delegates for the district where McDonald is located, as representing what McDonald wanted, and it has been possible for the employees at the outer plants to circumvent their desires. In dealing through the Amalgamated Association, that was their constant argument, that it was not to deal through plants, it must be by companies. The Steel Board in its decision informed the company that it should be by the plant unit.

The CHAIRMAN. You are satisfied with the language embraced in this bill?

Mr. KEPHART. Yes, I am.

The CHAIRMAN. That is what I wanted to know.

Mr. KEPHART. Yes. Then there was another question brought up here, Mr. Chairman, and that was as to the minority representation whenever a controversy would come up, as to their rights. I cite as an illustration of that this last raise which was granted by the Steel industry as a whole, a 15-percent raise as a whole throughout the entire industry. In Youngstown, Ohio, the way it was announced was that the vice president in charge of operations called in the employee representatives, and after due conferences and so forth, which did not mean anything in the least, because it was already decided on, ahead of time, they said through the importunities of the employees' representation plan, that they had decided to grant a 15-percent increase to the employees, despite the fact that even where there were no company unions, without any powers whatever it was a general increase throughout the steel industry. That was just propaganda to strengthen the employee representation plan there in the plant.

Then, the question has been raised about the differentiation between grievances and collective bargaining.

The CHAIRMAN. Yes; that is what I asked. I was afraid that that section (a) or proviso that says that any individual employee or any group of employees, or minority group, through representatives of their own choosing can present their grievances. To me, on the surface that should be interpreted just the same as going in as a majority.

Mr. KEPHART. Yes; it must be clarified. I want to illustrate that attitude, insofar as I have come in contact with the officials of the United States Steel Corporation, in comparison with those griev-

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ance conferences and collective bargaining. Their attitude on compliance with section 7 (a) is to listen to any group that comes in, and listen, lots of listening; but when you try to arrange a meeting for collective bargaining, to really get a basis of contractual relations with the company, that is different. Their attitude is, "We are willing to listen to grievances; we are willing to try to adjust grievances." There have been some adjustments made on grievances, but they draw the line between grievances and collective bargaining, and refuse to have anything whatever to do with you through collective bargaining, as controlled by labor organizations and their representatives. That is why I would like to have shown clearly the difference between individual grievances and a group on collective bargaining, because they are absolutely a different thing. There is a great deal of false propaganda that is given out by the steel companies that they are willing to deal collectively. They are not willing to deal collectively. They are merely willing to take up collective grievances, but not on a contractual basis whatever.

Then, I want to illustrate, as President Green has said, the 40-hour week has been of benefit throughout most of the industry but, at the same time, I want to show you how it is evaded constantly.

The CHAIRMAN. I just want to get that clearly in mind. Is this the idea: They are willing to take up such a matter as this, John Jones comes in and says, "Brown is pushing the work on too fast to me, and Green above him is pushing it on too fast to him, and I want that thing stopped." They will say, "Why, yes; we will look into that." But, when Wood, Snyder, Jones, and Brown come in and say, "We are representing such and such a union, and we want 10 cents an hour more on our wages", they do not listen at all. They just say, "Get out."

Mr. KEPHART. They do not put it quite as crudely as that, but the essence of it, the meaning of it is the same.

The CHAIRMAN. That is what I wanted to get clear.

Mr. KEPHART. I might illustrate that further by this: At the McDonald plant, which employs 2,000 men, we have what is known as the "mill committee" consisting of 24 members, representing the entire mill. That is composed of men who understand the work of each division. In order to start the process of collective bargaining and the policies we would have and the precedents that would be used to give us collective bargaining, it must be made clear, and we attempted to arrange a meeting of the entire 24 members of the mill committee with the assistant superintendent, who is designated by the management as the man with whom we must deal. He declined to meet with the 24, and my private opinion is the reason was that he did not want to let the rest of the workers see him bargaining collectively through an outside organization representing the workers. However, he did decide to meet with five of us. That is the largest number he would meet with. That has been a month ago. At that time we raised several questions that are absolutely necessary to decide, that is, for policy and precedent before we could properly proceed with our collective bargaining. That has been a month ago last Monday, and there has been no answer whatever, despite the fact that he promised to let us know. In other words, our union has been organized now for some 2 years and it

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has been nothing but a constant succession of delays to any requests we have made. We went before the Steel Labor Board and got a favorable decision there, and an appeal in the courts. We have tried every way possible to get action. We have petitions back there with 20,000 names on them as a final attempt to do this thing in a peaceful manner. If it cannot be done in a peaceful manner, as President Green says, there is only one alternative left, because we people who have been leaders in this movement, are faced with the proposition that it is either do, or else it is too bad. These men will not wait much longer.

The CHAIRMAN. You feel that this bill would help you a lot, do you, Mr. Kephart?

Mr. KEPHART. Yes. The main deterrent with us is the fact that the United States Steel Corporation has never been defeated in any of its labor policies. They do not commit themselves. The United States Steel Corporation, through its vice president, admitted that it had encouraged the company union, it had manned it. The men had no voice whatever, in spite of the fact that absolutely similar plans had been declared illegal when smaller companies did the same thing. In other words, the invulnerability of the United States Steel Corporation has been so much impressed on the minds of a lot of the men that they believe that there is no power that is competent to do anything that they do not want to do.

The CHAIRMAN. You have some very courageous labor leaders in that industry with the power of that big organization to meet. You men who carry the battle ought to be congratulated, as it is no easy matter.

(Discussion off the record.)

The CHAIRMAN. Your organization, the United States Steel Corporation, is the same organization that reduced the pay of their employees when Congress put through the economy bill cutting the Government employees' pay. At that time I stood on the floor of the House when that economy bill was up and said, "The instant you cut the Government workers' pay, these big corporations are going to cut their workers' pay; they will follow you." The day the economy bill passed I stood up on the floor of the House and read in the paper that morning that the United States Steel Corporation had just put into effect a 15-percent cut.

Mr. KEPHART. That is very true. It follows up that way. Did I mention the 40-hour week and its effect?

The CHAIRMAN. Not yet.

Mr. WOOD. You started to mention that.

Mr. KEPHART. I want to show you, gentlemen, how the purpose of it is defeated. As an example, job no. 1, throughout the depression, previous to the inauguration of the N. R. A. had been working 6 days a week. However, when the 40-hour week was inaugurated, the same amount of work was done as was done before, but, at the same time, they are very religiously sticking to the 40-hour week.

In other words, there are a great many jobs in the steel industry that formerly were 48-hour-a-week jobs that are now 40-hour-a-week jobs, although the same amount of work is being done on those jobs at this time.

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The CHAIRMAN. That is the speed-up system. They make them do in a 40-hour week what they formerly did in a 48-hour week.

Mr. KEPHART. It is not doing a particle of good insofar as the average worker in the steel industry is concerned, but it is saving the company a lot of money.

Mr. SCHNEIDER. Just how is that indicated? Is it because the men are speeded up or because the machinery is speeded up, or is there an increase in production per hour for the hours worked?

Mr. KEPHART. It is mostly in the office and on clerical jobs. For instance, there is one man whose job is compiling statistics. He has to go around and collect them. On the sixth day, or the day he would have his 40 hours in, his assistant does his work, but he only gets the assistant's wages. That is on Saturday, and on the first day of the week the boss does his work, and the assistant's and gets his wages. In other words, the company gets the same amount of work out of a 10-day period as they formerly did in a 12-day period.

The CHAIRMAN. Yes.

Mr. WOOD. Then when the assistant does the work at a lower wage, the employer is getting the work done at a lower wage?

Mr. KEPHART. Yes.

The CHAIRMAN. Of course, this committee reported a bill out last week, the Connery bill, and we are trying to get these things straightened out. That bill provides for equal labor representation on the code authority.

Mr. KEPHART. That is very important.

The CHAIRMAN. We believe that all of those things would be settled if we could get five union-labor men on with five employers, that thereby your speed-up system would be settled before the code was written.

Mr. KEPHART. Yes; that is important.

The CHAIRMAN. Then, as to the administration of the code, with these labor men on there, they would say, "wait", the minute they were breaking the law. You have heard what I said to Mr. Green, that if we cannot get that bill through the House, when the N. R. A. comes up in the House, I am going to try to offer it as an amendment there and see if we can get it through that way.

Mr. KEPHART. That would help.

The CHAIRMAN. This bill would help you. You have found that the Labor Relations Board has made wonderful decisions, but, as Mr. Green has so aptly said here this morning, it is like a court with no penalty, that cannot do anything to follow it up after they have made a decision. If you could do that in the courts, we could never get any damages or judgment for anybody, a judgment would serve no purpose.

Mr. KEPHART. We have done everything we could do so far legitimately in order to help the situation.

Mr. SCHNEIDER. Mr. Chairman.

The CHAIRMAN. Mr. Schneider.

Mr. SCHNEIDER. With a continuation of the conditions as they exist today and a denial to the workers of real collective bargaining, how long will the workers continue to be submissive to that condition? Is there a possibility of a strike?

Mr. KEPHART. Yes; it is very imminent. In that connection, let me cite one instance to you, gentlemen. We had a certain very well-

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organized lodge that had gone as far as they could go through legitimate organizations. However, the company declined to do anything for them. They got recognition by the Communists who made capital of the fact that they had tried to do other things in a legitimate manner. Now, the Communists have control of that lodge, and those men who were formerly good American citizens and workers are being rapidly converted to communism.

Mr. SCHNEIDER. Are you familiar with the situation in Monroe, Mich., and vicinity?

Mr. KEPHART. Not entirely, but somewhat.

Mr. SCHNEIDER. You know that there is quite a scattering of very radical men in those organizations up there?

Mr. KEPHART. Yes.

Mr. SCHNEIDER. It is largely due to the fact that very bad conditions have existed in the industry in the Detroit district, and to the denial of the majority who want to organize, and therefore, the radical element has a good chance to get control of these organizations if something is not done in the near future.

Mr. KEPHART. That is true and it is general. It is not only in Detroit. I am sorry to say that unless something is done rapidly it is seriously growing in a number of places all over the country.

The CHAIRMAN. In other words, your idea is that labor, the legitimate labor man, the union man, has been the bulkwark against communism in the United States.

Mr. KEPHART. Certainly.

The CHAIRMAN. Now, you gave an instance of where you had one of your own lodges that was well organized, and where the company would not deal with them, and would not give them their rights, where the Communists stepped in and the members of the lodge became disgruntled with living and conditions and everything else and said, "Well, let's go Red."

Mr. KEPHART. That is it.

Mr. WOOD. And become so.

Mr. KEPHART. Yes.

Mr. WOOD. And they proceeded to strike?

Mr. KEPHART. It is part of a big combine, and their tactics now, they are going to attempt to get the rest of the lodges in this combine in the same mood, and then they are smart enough to see that a strike of this single plant would not be effective. If so, they are going to try to make a general strike in this one chain of business.

Mr. SCHNEIDER. Does one shop shift their workers from one plant to another to defeat the purposes of the men in organization?

Mr. KEPHART. That has been a very common occurrence.

The CHAIRMAN. Mr. Ramspeck, do you have any further questions?

Mr. RAMSPECK. No further questions, Mr. Chairman.

The CHAIRMAN. Mr. Wood?

Mr. WOOD. No; Mr. Chairman.

The CHAIRMAN. Mr. Kephart, if you desire to file a brief or any further statement or any papers for the record, you may do so. Just send it along to us.

The CHAIRMAN. Was the petition you mentioned addressed to the Committee on Labor, or who was it addressed to?

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Mr. KEPHART. As a matter of fact, my Senator from Ohio, Mr. Vick Donahey, is on the Senate committee. We thought it should go to him.

The CHAIRMAN. We would be glad to receive it, but give it to the Senator, and he will see that it goes to the proper committee. We are glad to have had you with us. We thank you for your testimony.

Mr. KEPHART. Thank you.

The CHAIRMAN. The committee will stand adjourned until next Thursday at 10 o'clock. We will hear Mr. Emery on Thursday and we will hear Miss Perkins the following day.

(Whereupon, at 1:25 p. m., the committee adjourned until Thursday, March 28, 1935, at 10 a. m.)

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LABOR DISPUTES ACT

THURSDAY, MARCH 28, 1935

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

The committee met at 10 a. m., Hon. William P. Connery, Jr., chairman of the committee, presiding.

The CHAIRMAN. The committee will come to order.

We will hear from Mr. Frank J. Dillon, general organizer American Federation of Labor, in charge of the automobile industry.

STATEMENT OF FRANK J. DILLON, GENERAL ORGANIZER IN CHARGE OF THE AUTOMOBILE INDUSTRY, AMERICAN FEDERATION OF LABOR

Mr. DILLON. Gentlemen of the committee, in submitting testimony before this committee in support of the Wagner-Connery labor-relations bill, I desire to confine my statements very largely to the needs and problems confronting approximately a half million of our fellow citizens who are employed in one of the Nation's largest and, possibly, the most important industries, the automobile industry. It has been my privilege to be actively associated with these people during a long period of time, and I regard myself competent to speak with some understanding of that phase of their problems which relates to employee-management relationships.

In scarcely more than a quarter of a century's time the automobile industry has grown from infancy, from comparatively insignificant financial power or prestige, to a powerful empire, dominating completely the destiny not only of a half-million working people, but also small merchants and dealers to a number that would stagger the imagination of the most progressive of us.

In general, the automobile industry is today the most profitable of all large industries, having contributed what is reputed to be the richest man in the world. It is, at the same time, the most pampered and favored of industries in our country. The public mind, through skillful advertising and manipulations, has come to regard it as a most efficient industry, managed and directed primarily in the interests of employees and stockholders where, as a matter of fact, the records show that these thousands of workers are today producing greater wealth per man-unit at a comparatively lower wage rate than ever before, while the few who control and dominate this industrial empire receive ever larger earnings in the form of bonuses, interest, salaries, and every other device known to high finance and clever manipulations of modern industry.

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This industry has profited to a larger extent possibly than any other industry in the United States by reason of the benefits accruing to it through the enactment and enforcement of the National Industrial Recovery Act. No industry has exerted a greater influence to unjustly deny to their employees similar advantages and benefits intended for them by the Congress of the United States under this act. This has been accomplished in a number of ways. Men have been denied the right to organize, through the exercise and the manipulation of company-dominated and controlled unions, the establishment and maintenance of a vicious espionage system, and the unfair discharge and blacklisting of hundreds of men and women who had merely exercised their rights under the law. The discriminatory discharge and the development and maintenance of the infamous and disgraceful blacklist constitutes the heart and soul of the labor policy of the automobile industry of our country.

So unfair and so malicious has been the practice of management in the automobile industry that I felt constrained to direct the President's attention to the situation by sending him the following wire:

DETROIT, MICH., *March 25, 1935.*

THE PRESIDENT OF THE UNITED STATES,
The White House, Washington, D. C.

On behalf of the United Automobile Workers, affiliated with the American Federation of Labor, I respectfully and vigorously protest to you the recent manifest determination of automobile employers to deny these workers their fundamental and legal right to develop and perpetuate a free and independent union for their mutual protection by resort to ruthless discharges and discriminations upon a wholesale scale. These same workers 1 year ago today patriotically declined to resort to strike action to abolish such injustices that they might substantially contribute to your courageous effort in behalf of national recovery for our entire Nation. The automobile employer has totally and deliberately disregarded the rights of these workers. The policy and attitude of the Automobile Labor Board disqualifies this agency from contributing relief in the existing emergency. This unjustified attitude assumed and practiced by the automobile manufacturers has precipitated a crisis in labor management relationships within the automobile industry which can only be righted through your personal and prompt attention. Conscious of the seriousness of the prevailing situation, I regard it as incumbent upon me, on behalf of the duly constituted representatives of our organization, to respectfully request the privilege of a conference with you at your earliest convenience that we may be able to acquaint you minutely and accurately concerning this momentous problem.

F. J. DILLON,
General Organizer, American Federation of Labor.

The automobile industry has made a pretense only of cooperating in the recovery program and has never complied with either the spirit or the intent of section 7 (a) of that act. So flagrant and so unjustified was their attitude and policy that it became necessary for the President of the United States to intercede in an effort to avert a general strike in this industry during March 1934; and the thousands of workers who had joined the American Federation of Labor desisted from striking in a patriotic endeavor to make a contribution to the President of the United States in his courageous and lofty effort to bring about complete economic recovery.

The settlement which was negotiated through his good offices provided for the establishment of an Automobile Labor Board to consist of three citizens, one representing the employer, one repre-

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senting the employee, to be presided over by a neutral, representing the Government of the United States. Mr. Nicholas Kelley was appointed by the President to represent the employers. Mr. Richard L. Byrd was appointed by the President to represent the employees, while Dr. Leo Wolman of Columbia University was selected to preside as chairman. This Board, under the terms of the settlement, was to have jurisdiction only in matters of representation, discharge, and discrimination; and was to sit in the city of Detroit, Mich.

Out of this settlement the thousands of workers in this great industry took on renewed hope and pinned their faith in the principles of justice which they conceived to be an integral part of our Government, to be emulated by this Board primarily in the protection of these workers in their fundamental and legal right to organize into free and independent unions, perpetuated for the specific purpose of negotiating and bargaining with the several managements to a successful and practical conclusion on questions relating to the welfare of the industry in general, and the employer and employee in particular.

In the accomplishment of this, representatives of the American Federation of Labor set about to work and cooperate with this Board. Before the end of April 1934, local unions embracing employees in 15 different automobile plants of the Nation, at the request of the Board, had prepared and submitted their respective membership records, to be checked with the pay-roll records of the company, for the purpose of setting up some practical representation plan.

Despite the efforts of representatives of the Detroit office of the American Federation of Labor we were unable to get from either Dr. Wolman or any member of his Board any definite pronouncement as to when we would be able to know specifically what the result of the checking of the lists had been or when there would be established some plan of representation. All replies of Dr. Wolman were evasive. The only thing definite he ever did say was—

> Before any plan is promulgated, representatives of the American Federation of Labor and representatives of the employer will have an opportunity to be heard and a privilege to present their proposals and ideas to the Board.

This we believed. We believed the Board meant what they said when they stated that we would have an opportunity to present our case, to submit our plans, to state our ideas with reference to the establishment of a mutually agreeable representation plan.

The Board did not keep its word. Dr. Wolman did not keep his word, but instead he called me at my hotel at 6 p. m., on December 8, 1934, and stated that he desired to see me at his office the next morning at 9:30. Of course, I went there, when, to my amazement, he there stated that the Board had decided to conduct elections for the purpose of electing representatives for collective bargaining; and he briefly outlined the plan and asked me what I thought of it.

I told him that it was unsatisfactory to the worker, that it was impractical in that it decided no fundamental question; that it was impossible because it contributed the balance of power to the employer and provided no economic power or right to the worker; and, finally, as I viewed it, it merely meant the legalization of a company dominated, financed, and controlled company union.

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Dr. Wolman then told me that they had decided to conduct elections immediately; and I asked him if he had consulted the company. He said that he had. I asked him if the plan was agreeable to the company, and he said that it was.

The Board has, in my judgment, betrayed the people who were responsible for its establishment. They have failed dismally in carrying out either the spirit or the intent of the agreement. They have been unfair to the President of the United States. They have destroyed the faith of thousands of workers in governmental agencies, and diminished substantially the possibility of establishing a proper and legitimate employer-employee relationship in the automobile industry without resort to industrial strife, with all of its attendant evils, sufferings, and sacrifices.

It has been my experience over more than 20 years to participate in and to observe the workings of governmental agencies, established for the purpose of insuring justice in practical employer-employee relationships, and I have observed that in every case employers usually regard with suspicion, in the beginning at least, and oppose vigorously with all the power at their command, the ruling of every such governmental agency set up to preserve and to guarantee the rights of the worker.

It is significant, however, to observe now that this Board, which was appointed by the President to meet a great national emergency and designated as the Automobile Labor Board, constitutes the first agency of this character to be applauded and supported enthusiastically by the employers generally in the automobile industry. Can it be said in truth that any act or decision of this Board has made one single contribution to the correction of evils complained of by these thousands of workers to the President 1 year ago?

No governmental agency was ever launched or established under more auspicious circumstances than was this board. No board ever received a more hearty cooperation from the American Federation of Labor than did this board. The resources of our entire organization were at their disposal. We insisted, over a long period of time, that our people conform to their decisions and cooperate with them in every effort to bring about the ideals and the purposes of the President of the United States.

I say to you now that no board has proved to be a greater failure than has this board. No governmental agency has ever made a more substantial contribution to the continuance of misery, to the perpetuation of industrial servitude, and the abolition of inherent rights long enjoyed by the citizens of our Republic than has the repudiated Wolman Automobile Labor Board. Its principles and its policies may be utilized as constituting useful material for magazine articles or college textbooks, where theories predominate and dreams of master minds are expounded; but the working man who stands upon the production line in America's greatest industry, working at an ever-increasing speed with the oncoming of each production season, cannot comprehend the value of complicated theories when bread and employment are involved.

The phrases and the ideas propounded by Dr. Wolman and his associates mean nothing except the inculcation of contempt and hatred, which form a bitterness in the hearts of workers that con-

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stitutes an actual menace, not only to this industry but likewise to the very foundation of our Government and its free institutions.

In considering the record of the Automobile Labor Board the National Industrial Recovery Board, in a letter submitted to the President of the United States, dated January 28, 1933, said:

> The Board is of the opinion that definite consideration should be given to the advisability of establishing, under the authority of the National Industrial Recovery Act and Public Resolution 44 of the last session of Congress, a comprehensive automotive-industry labor relations board. We hope that this labor-relations board, or a subsidiary agency, may be mutually agreed upon by all interested parties as a means of fostering constructive development of improved relationships; and that through this mutual agreement the area of work undertaken by the board, or a subsidiary agency, may be extended far beyond the limits set by any legal authorizations to which reference has been made. It would seem that the time has arrived for a major constructive effort of this type.

In addition to being a failure and being repudiated, the policies, the decisions, and the attitude of the Wolman Board are responsible for the taking of a strike vote in the automobile industry. I say today to this committee, and I assume all responsibility, that if the vote that is now being taken reveals the fact that these people have voted to withdraw their services from the industry, I shall regard it as being my duty to proceed in carrying out this mandate regardless of consequences unless this bill is enacted into law. And I say to you today that if this becomes necessary, we can attribute it to the failure of the Wolman Board to measure up to their responsibilities to carry out the intentions and to emulate the ideals repeatedly stated by the President of the United States, together with the unjustifiable attitude assumed by my employer.

I express the opinion that the day has come in the United States when Congress must enact legislation which will compel employers to recognize the rights of workers. Working men and women in our Republic will no longer tolerate the overlords and Bourbons of industry to develop this kind of Hitlerism, Mussolinism, or any other kind of "ism" in industry for the purpose of perpetuating any system of industrial servitude.

The time has come when the United States Congress must preserve for the working people of the United States their fundamental and basic rights. Men in this industry will be free, and employers must recognize it; and no board of governmental agency can justify the continuance of any devise or any philosophy under the guise of meaningless phrases which would deprive workers of their inherent right to organize and to meet upon an equal basis with the employer and to negotiate to a successful conclusion their common problems.

No man or no group of men can defend employer-employee conditions as they prevail in the automobile industry today; and no piece of legislation will contribute more substantially to their correction than will the enactment by the United States Congress of the Wagner-Connery labor relations bill.

The enactment of this piece of legislation will guarantee workers free elections, embracing the majority-rule principle, for the purpose of determining what organization they desire to represent them in collective bargaining purposes. The elections being held by the Automobile Labor Board do not provide that opportunity and in fact serve only to develop collective confusion which prevents a free

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and independent trade union from functioning as a bargaining agency for the workers.

The Wolman board elections are conducted on company property, inside the plants, under an atmosphere which precludes that absolute freedom of choice by workers without which genuine industrial democracy becomes only a myth; and the fact that they are imposed upon the workers in all of the plants, whether the workers themselves desire them or not, is a dangerous and unjustifiable precedent for the Government to establish.

The so-called "bargaining agencies" set up under these elections by the Wolman Board are in fact only governmental company unionism predicated upon a philosophy which constituted a direct contradiction of the principles and precepts of the foundation of our Republic and its free institutions.

New elections, held under the provisions of this act embracing the principle of majority rule, would satisfy the need for a method of determining conclusively the problem of representation, a right for which the automobile workers have contended extensively, but which is denied them by the Wolman Board, and which the National Labor Relations Board deems itself, without authority, to provide.

This legislation would establish the principle of majority rule in the automobile industry. Proportional representation was accepted last March only as a temporary compromise by the unions; and despite the fact that the temporary experiment proved such a complete failure as a method of bringing about collective bargaining in the industry that the American Federation of Labor was compelled to withdraw from the agreement which established it, the Wolman Board, with the ardent support of the industry, has proceeded to ram it down the workers' throats in its election scheme.

Proportional representation is a scheme whereby the management can divide the workers and prevent a legitimate trade union from carrying on collective bargaining; and the automobile industry affords the best possible example of just how that inevitably results.

This industry is the only one in the country today where the workers are deprived of the right to select their collective-bargaining representatives under the principle of majority rule; and as the National Labor Relations Board has so admirably set forth in the Houde decision, collective bargaining on any other basis is a mockery. A stable and a responsible organization is necessary in order to obtain justice and maintain peace in this industry; and unless the workers are given the privilege to have and to maintain such an organization, there is no telling to what extent confusion and violence may go.

The National Board, as provided for in this act, may be expected to provide for collective bargaining on an industrial basis. Despite the industrial form of the American Federation of Labor unions in this industry, the Wolman Board has provided for departmental units, many of them along lines which make it almost impossible for the workers to function as an industrial unit, which is obviously necessary in such a mass-production industry.

From the principles used by the National Labor Relations Board and the powers given to this Board in the bill under consideration,

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it is apparent that the industrial form would be followed in determining units for collective bargaining purposes.

The Wagner bill would enhance the power of the Government and the workers by establishing section 7 (a) as the law of the land, rather than merely leaving it as an adjunct to a voluntarily accepted code. The National Industrial Recovery Act has received so many challenges as to its legality and has been so completely defied by industry as regards section 7 (a) that there is an imperative need for a direct mandate from Congress to the workers and employers of American industry to collectively set their house in order.

The automobile manufacturers have led the violent resistance of industry to the Government, as is instanced by the refusal of the Houde concern in Buffalo to accept the right of the majority of its employees to select the organization to do collective bargaining for the entire plant, despite the ruling of the National Labor Relations Board and prosecution by the Department of Justice.

Section 7 (a) is the most important restriction in the N. R. A. against complete control and domination of employer-employee relationship by management. If this bill becomes law it will mean that the unions will, with the increased protection of the Government, be placed upon an equal basis with the employer; and in the automobile industry it will mean that the worker will be able to achieve some control over the speed-up and have some voice in the hours and wages for which he works.

This legislation will protect the automobile workers from discrimination for union activity. The Wolman board has failed to prevent discrimination; and hundreds of men and women who dared to stand up for their rights to organize into free and independent trade unions are today walking the streets unable to get a job any place in this industry, while thousands of farmers and hillbillies from the South come streaming into Michigan to take their places.

The Wolman board has never in the 12 months of its existence ruled that a worker has been discriminated against for union activity. It has failed to order a single worker reinstated on his original job, and has never once ordered back pay for workers discharged or laid off improperly for months at a time. It has proven totally incapable of understanding the workers' problems, and in the vast majority of cases in which it has rendered rulings it has unequivocally whitewashed the discriminatory actions and policies of the employers. The national board, set up under the Wagner Act, would have definite power of enforcing its decisions and thus would not be compelled to compromise its prestige with any unscrupulous employer in administering justice.

This bill would eliminate the company union from the automobile industry. Before the passage of the N. R. A. the company unions in the automobile industry could have been counted upon the fingers of one hand; but with the growth of the workers' desire for an organization to represent them in the industry, management developed and sponsored its "employee representation plans" and "works councils" for the deliberate purpose of confusing the workers and preventing them from building independent trade unions of their own. Thousands of dollars were diverted from the pay envelops of the workers and dissipated to develop these company unions. The

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workers were coerced into joining them and the employer, by rigid control, prevented them from accomplishing anything but division and confusion in the ranks of his employees. And now the automobile labor board, through its election scheme, has done nothing more than to put the Government's stamp of approval upon them and to legalize the company union. This bill would stamp this monstrosity out of the automobile industry by preventing employers from dominating or contributing financially to a fake labor organization. It would thus remove the only strength and support that the company union possesses.

Not only has the automobile industry devised a speed-up system, perfected an espionage system, and spent many thousands of dollars in developing and maintaining company unions, but they have likewise made a substantial contribution to the relief rolls of our country. Relief figures in all of the automobile centers show how completely the automobile companies fail to spread their available employment. Within a few weeks after any substantial lay off occurs, the number of workers on the relief rolls is greatly increased and continues to rise steadily until another production season starts.

In Detroit, during April 1934, which was the highest peak of employment in the industry since 1930, a survey showed that 30 percent of the people on relief were automobile workers. (Henderson report, p. 6). As the automobile workers were laid off after that, they were forced, due to their meager earnings, to turn to the Government for assistance; and the number of families on relief increased from 25,414 in March 1934, to 41,504, in August 1934. By December 1934 there were 60,069 families on the welfare rolls in Detroit, which meant a total of 246,282 persons totally dependent upon governmental assistance. This is the highest peak that the welfare load of Detroit has ever reached in history, and it occurred in the most prosperous year which the automobile manufacturers have enjoyed since the depression began.

Even now (Mar. 25, 1935), when we are supposed to be in the peak of automobile production and employment, there are 35,924 cases, equivalent to 147,288 persons, on the relief rolls; and welfare officials estimate that this figure will remain at about the same level until it starts rising again. The cost of this burden which the automobile industry is shoving on to the shoulders of the Government and the general public is tremendous. The cost for the city of Detroit alone during the year 1933 was $14,620,848.46, while in 1934 it rose to $17,011,289.22. The approximate expenditure for relief by the city of Detroit at present (Mar. 25, 1935) amounts to the sum of $70,000 per day. And this picture of Detroit is typical of what has happened and is continuing to happen in the other automobile centers of our country.

It is a fact worthy of recording in this testimony that now as never before since the inception of the American Federation of Labor have its responsible representatives consistently utilized the organization's resources and contributed of their individual capacity to establish practical and mutually agreeable relationships between management and employee in all industries of our Nation. This policy has been religiously adhered to in or handling of the automobile situation. We believe and have emphasized repeatedly to the automobile worker

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the advantages and benefits accruing from the conference room as against the philosophy of strife and turmoil. Our appeal has been for legitimate conferences with responsible management in this industry for the purpose of emulating the adopted policy of the United States Congress and of carrying into practical execution the repeated pronouncements of the President of the United States. These appeals have either been denied or evaded by management.

The labor policy of the automobile companies is indefensible because it emanates from a false philosophy symbolic of coercion, intimidation, and a complete evasion of an industrial responsibility and patriotic duty.

It is significant to here record the fact that Communists and communistic theories are more prevalent and substantially stronger among employees within the automobile industry now than 1 year ago, constituting an actual menace to the future of the industry and a challenge to our form of government as well. It is my humble judgment that this feeling of bitterness, hatred, and resentment now so prevalent among automobile workers is the direct result of management's failure to genuinely conform to the spirit and intent of section 7 (a) of the National Industrial Recovery Act.

I believe further that unless this Congress enacts into law this proposed piece of legislation the prevailing feeling of resentment and bitterness upon the part of these workers will be intensified to an extent where they may disregard longer the counsel and advice of representatives of legitimate free and independent labor unions, who appreciate the situation and who seek only a proper solution for the common good of all.

I am not disillusioned concerning the attitude of management. I do not believe they contemplate conceding one point to the workers in their struggle for industrial democracy. I do not believe they contemplate granting one concession to their workers in their struggle for industrial justice unless this Congress enacts legislation compelling them to do so. I predict that if Congress fails to give legislative relief to these workers and meet this challenge to industrial progress upon the part of reactionary absentee management, the workers within the automobile industry will refuse longer to submit to such conditions, and if necessary will go out and fight to secure these fundamental rights for themselves, just as our ancestors did that religious and political liberty might be secured and perpetuated within our Republic.

In conclusion and on behalf of 500,000 automobile workers in one of the Nation's largest industries today working at a speed which is excessive in the production of ever-increasing wealth, receiving as compensation an ever-diminishing share of this wealth, within whose hearts there still lingers faith in our Government and its free institutions, I respectfully urge upon ths committee the fact that there prevails a genuine and acute crisis. I implore you in behalf of these workers, in behalf of their wives and their children, who seek no advantage but only the establishment and the maintenance of peace with justice within industry, the speedy enactment of the Wagner-Connery Labor Relations Act.

The CHAIRMAN. I would like to ask you a few questions.

I have always been very much interested in this automobile situation, going back to March of last year, When Mr. Green testified

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here on the matter with reference to that agreement that was made at that time. The statement was made that Mr. Richberg is the one who is responsible for that Wolman board over there, and the things that came out of it—the strikes that resulted in the textile industry on the 7 (a), because they followed out in the textile industry and the industries in the country every principle of the agreement entered into at that time. I always felt that the strikes which occurred, the longshoreman strike and the textile strike and all the strikes, came as a result of 7 (a) being disregarded and being cast aside in that agreement for the automobile situation.

Do you think that Mr. Richberg is the one who is responsible for that?

Mr. DILLON. I wouldn't say that. Mr. Richberg to my knowledge at the time had nothing to do with that. Our dealings were through General Johnson. This understanding, Mr. Connery, was a compromise settlement negotiated for the purpose of averting an impending strike in the industry.

This administration, so far as labor is concerned, in my humble opinion, has followed the advice of reformers and welfare workers rather than following the practical counsel and advice of experienced labor counsel. I think that that is the cause or the reason that we find ourselves in the shape that we are.

The CHAIRMAN. This committee had before it a few years ago a bill upon which we had hearings, for equal labor representation on the code authorities; that is that there should be just the same number of employees on the code authority as employers. Do you think that if we had had that situation at the time of the automobile settlement, we would have been better off?

Mr. DILLON. There is no question about it. I think that one of the points of cleavage there was the infamous merit clause.

The CHAIRMAN. Do you think that we would have a better relationship?

Mr. DILLON. A better relationship, a better code, and a better understanding.

The CHAIRMAN. All the way through?

Mr. DILLON. I think so.

The CHAIRMAN. I think that in general you are in favor of the N. R. A. principles of no child labor, no more yellow-dog contracts, the right of organization, and the right to bargain collectively?

Mr. DILLON. Yes.

The CHAIRMAN. But you are very much dissatisfied with the code?

Mr. DILLON. Very much. We are very much dissatisfied with the Automobile Code. It means nothing to the workers.

The CHAIRMAN. Did they make the minimum wage the maximum wage in that code?

Mr. DILLON. Yes.

The CHAIRMAN. The same as they did in all the other industries?

Mr. DILLON. Yes.

Mr. RAMSPECK. Might I ask a question?

The CHAIRMAN. I think in justice to the gentleman from Detroit that we ought to give him the first chance to speak. Mr. Lesinski.

Mr. LESINSKI. I will yield to my friend, Mr. Ramspeck.

The CHAIRMAN. All right, Mr. Ramspeck.

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Mr. RAMSPECK. What was the objection of the automobile workers to the Wolman board plan of elections?

Mr. DILLON. First, they did not consult us in the set-up and arrangement for elections. Second, proportional representation is a farce so far as practical representation for labor is concerned.

Mr. RAMSPECK. What do you mean by "proportional representation"?

Mr. DILLON. Every group in the shop is represented. Any group of workers may decide to elect their representatives.

Mr. WOOD. What they term the minority?

Mr. DILLON. Yes.

Mr. RAMSPECK. They didn't submit a clear-cut issue?

Mr. DILLON. No.

If those workers had been given, Mr. Ramspeck, an opportunity to determine whether they desired to be represented by an inside union or an outside independent union, we would have been happy to have participated in that election and to be governed by the decision. I cannot conceive of a fairer way than to permit the workers to decide.

Mr. RAMSPECK. Will you describe to the committee how the election was held?

Mr. DILLON. The elections were held on company property. The factories were divided up into voting districts. Booths were set up in the plant. The men or the employees were given a certain period of time in order to vote, and they were not docked for this time.

Now, we have been advised—and, we believe, reliably—that the first election held by the Cadillac plant, was along about noon, when a number of employees failed to vote; expressed their desire not to vote. Dr. Ross, who was in charge, called Dr. Wolman in New York and asked what to do. He said, "The men are not voting."

The doctor said, "Go out and solicit votes."

Mr. WOOD. This is Dr. Wolman that said, "Go out and solicit votes"?

Mr. DILLON. Yes.

And still the men did not vote.

Then the boss came around, and he would go from man to man and say, "John, you had better vote."

Mr. RAMSPECK. What safeguards were placed around the voting in the way of secrecy?

Mr. DILLON. I think they were secret so far as the booth in itself was concerned. And I am confident that the votes were tallied properly. I don't think there is any question about that. But I don't think that any man in a factory in an atmosphere of that character is really free to vote his own choice. In fact, he has no choice given.

Candidates were nominated from districts, from departments. They were run as individuals. A man who might be a company man might say, "I am an A. F. of L. man", as they did in thousands of cases; and then the man who voted simply marked in his affiliation.

Thousands of men voted in order to hold their jobs, and thousands of them refused to reveal their affiliation.

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We find now that every officer—and we are prepared to prove this—every officer and every man who was active in opposing this election and this scheme is now hitting the bricks all over the country. They are out.

Mr. RAMSPECK. Mr. Dillon, here is what I am trying to find out: Was the question submitted to the employees in the automobile industry of voting for or against a union affiliated with the American Federation of Labor?

Mr. DILLON. No. They have never had that opportunity.

Mr. RAMSPECK. They have never had that opportunity?

Mr. DILLON. That is what we are fighting for now.

Mr. RAMSPECK. That is all I want to ask.

The CHAIRMAN. Mr. Gildea, have you any questions?

Mr. GILDEA. No.

The CHAIRMAN. All right, Mr. Wood.

Mr. WOOD. This method of voting, Mr. Dillon, as you say, was that these booths were set up in the plants, each individual plant; and the votes were supposed to have been by secret ballot. But testimony has been adduced in previous hearings on similar questions to this where it has been brought out that while the vote was by secret ballot, the indication is that the employees did not know whether it was going to be very secret or not; that when they went into this booth, there was always a number of foremen and superintendents and company men standing around, where the employee coming from his work was forced to pass them and see that they were looking at him and that they were interested in what he was going to do in the booth. And that, of course, in itself, it seems to me, influenced the man in his decision, because it is a silent method of intimidation.

The thing in the back of that man's mind when he went in was, "Well, now, I wonder whether they will find out just how I voted." And, seeing these foremen and supervisors and superintendents standing around, and knowing the attitude of the company, and the very fact that they voted in the factory, and that the foreman was interested in him going in there, that in itself in a large degree influenced the decision of that man when he got inside the booth, because what he had in the back of his mind was the question or the question mark, "Are they going to find out how I voted? If they do, I will lose my job."

Mr. DILLON. That is right. And if he refused to vote, he would lose his job.

Mr. WOOD. So that there was a subtle, quiet method of intimidation there. No word said, but the foreman, of course, and the representative of the company let all the employees know very clearly what their stand was. It may be that they didn't tell them how to vote; but by actions and by insinuations and innuendos, they really told them straight out what the company's position was.

That in itself, when the election was held in the plant on the company property, in many cases, I am sure, influenced thousands of those men to go in there with a great deal of fear and trembling; and they voted as they thought probably the company would desire them to do.

Mr. DILLON. That is right.

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I don't want to be misunderstood. I have no evidence of this, but I am reasonably sure in my own mind that so far as the physical construction of that voting was concerned, that every man did vote secretly; that is, so far as that little booth was concerned. But it was in the factory, and the boss was outside the booth.

Mr. LESINSKI. It is an absolute fact that every employee of the company got a letter from the company. He also got a card as a member of that company union. Did you see any of those?

Mr. DILLON. Yes.

Mr. LESINSKI. That is what happened. That was not an intimation. They gave them a letter and gave them a card to join the company union. And they organized themselves at their own expense and paid all expenses.

Mr. DILLON. The whole proceeding is a disgrace.

Mr. LESINSKI. That is my view.

Mr. DILLON. It has produced a feeling among the people that is not good, not only in respect to this Board, but as citizens. It doesn't make good citizens out of men. They lose faith in their Government. They lose faith in everything.

Mr. WOOD. In this matter of representation, what sort of representation have they there now? Is it departmental representation or what is the set-up there?

Mr. DILLON. The factory, as I say, Mr. Congressman, is divided into districts by the Board. I don't know whether they determine so many employees or do it geographically or how.

Then they have a primary, where candidates are nominated. And then they have a final election, and the representation comes through departments.

That is the basis—the departments that are set up by the Board. There is no trade. There is no factory. There are just the departments, an imaginary line as drawn by the Board.

I may be in the spring department. Those employees there are designated as a separate department. Then I represent the spring department, and I am provided by the company with a lodge hall, a place to meet in.

They give you wonderful service. You are taken care of in nice shape. You are not docked for the time that you spend representing your constituents. And every demand that has been made up to the present time has been denied by the company. So they have met with exceedingly great success.

Mr. WOOD. In this voting, in making that choice of the organization that they desired to represent them, do they have any method of putting up candidates?

Mr. DILLON. They have never had that opportunity, Congressman. This is an election of individuals. But the Board said in their notice that if the employees desired, they could write in, insert themselves, their affiliations.

Mr. WOOD. In other words, there was just a group of candidates put forward; and they had no designation at all as to whom they represent?

Mr. DILLON. Yes. You can designate it that way. But in the primary the voter must do that upon his own volition. There is no choice between a free union and an inside union.

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Mr. WOOD. The fact of the matter is that there never has been any real straight-out, clear-cut vote?

Mr. DILLON. No.

Mr. WOOD. There never has been any vote where a man was asked: "Do you want a representative of the American Federation of Labor? Do you want a representative of a company union? Do you want a representation on some other union?"

Mr. DILLON. That is right. They have never had that opportunity.

Mr. WOOD. They have never had that opportunity?

Mr. DILLON. No.

Mr. WOOD. It has been done by this method of putting up candidates?

Mr. DILLON. Through departments and individuals.

Mr. WOOD. As individuals?

Mr. DILLON. Yes.

Mr. EAGLE. Candidates for what?

Mr. DILLON. For representation upon a collective-bargaining board.

The CHAIRMAN. Will you yield to me for a moment?

Mr. WOOD. Yes.

The CHAIRMAN. I want to make clear what Mr. Wood is bringing out.

I asked the Labor Board to order an election in the General Electric Co. in Lynn. I think the ballot that they had had on it three questions, or probably four:

Do you want to be represented by the American Federation of Labor?
Do you want to be represented by an independent union?
Do you want to be represented by the plan of representation now in force in the General Electric Co.?

And I think they had one other place, one other space. And they beat the company union 2 to 1. I think that that is what Mr. Wood means when he says that you didn't get that at all in your election.

Mr. DILLON. The automobile workers have never had that opportunity, Mr. Congressman.

The CHAIRMAN. He has never had a chance to choose between them.

Mr. WOOD. My thought was that they just put these candidates up, and the men had no way to find out where the candidate was located, whether he was an American Federation of Labor man or whether he was for a company union or elsewhere. It was only done by departments.

In other words, if you were to elect a representative in a department, you might, for example, be a die worker; and you might elect someone who knows nothing about diemaking, to represent you.

Mr. DILLON. It is collective confusion. That is all that it is. The legalization of a company union; the establishment of facism in labor relations. That is exactly what has transpired in this industry.

Mr. WOOD. This whole set-up has been promulgated by Dr. Wolman, hasn't it?

Mr. DILLON. Yes.

Mr. WOOD. Or by that Board?

Mr. DILLON. I would say, Dr. Wolman. He is the Board.

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The first thing that the Board did, the first official act that the Board did, was to agree upon unanimous decisions. Every decision was to be a unanimous decision. There was to be no dissenting vote.

That mean that labor was abolished on that Board. Dr. Wolman and Mr. Kelley wrote the decision, and our dear brother signed.

Mr. WOOD. When did this compromise take place?

Mr. DILLON. That was in March of 1934 when the agreement was negotiated.

Mr. WOOD. That was when there was a probability of a strike.

Now, the employees voted to forego the striking privilege and they voted to remain at work out of deference to the President of the United States, so as to give the administration every opportunity to bring about amicable relations if possible with the workers.

Mr. DILLON. To bring about recovery for the entire country.

Mr. WOOD. To prevent as much chaos in the industry as possible.

Mr. DILLON. Yes.

Mr. WOOD. Not because they were in any wise in agreement with the plan submitted to them by the Board?

Mr. DILLON. We relied upon Congress as I stated; and we had the assurance of Dr. Wolman that before any plan of representation was set up, the Board and the employees would sit around a table and discuss a plan.

But we were never given that opportunity. Dr. Wolman himself stated to me that that was the plan that was agreeable to the company; that we had to take it or leave it. So we left it.

Mr. WOOD. The employees went a long way to prevent a strike.

Mr. DILLON. The employees, Congressman, today are taking a strike vote.

Mr. WOOD. But at that time they went a long way to prevent this cessation of work. And really, in doing so, they simply relinquished a great many rights that they really had.

Mr. DILLON. The American Federation of Labor representatives went fearlessly to these people in every State and insisted that they remain at work and not strike and accept this agreement. We wanted to make our contribution to the Government, to the administration, in its effort to set its house in order.

After 1 year's experience we have been deprived of all our rights. Our people have been blacklisted and driven from this industry.

I will say to you quite frankly that unless this bill is enacted and we get the relief which will come from this bill, we are going to go; and with us will go rubber.

The workers will not submit peaceably to these conditions any longer. We have made our contribution. These people are just as patriotic and just as upright citizens as you will find anywhere.

Mr. WOOD. I fully agree with you there. They have demonstrated that in the last year.

Mr. LESINSKI. Mr. Dillon, you were present at the antisaloon hearings. What was your original idea when they had taken that testimony? What was your reaction in there? Do you recall those hearings?

Mr. DILLON. When the committee first came in, I was not so much enthused about it.

Mr. LESINSKI. Would you say that you thought as much about that committee as you do about Dr. Wolman's?

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Mr. DILLON. I was not enthusiastic about it at the time, but I have changed my mind about it. I think the Board did a wonderful job.

Mr. LESINSKI. What is the reason why they did that wonderful job?

Mr. DILLON. I don' know. I imagine because they are honest and upright men, I would say.

Mr. LESINSKI. In other words, they found out something that they didn't know existed in this country?

Mr. DILLON. I think they reported absolutely what they found. They corroborated every contention made by us. They condemned the speed-up. They found an espionage system. They found that the company union was financed by the company. And they so reported to the President of the United States.

Mr. LESINSKI. There was no response made to that in the Ford Motor Co.?

Mr. DILLON. No.

Mr. LESINSKI. And only a gesture made in the General Motors plant.

Mr. DILLON. That is right.

Mr. LESINSKI. You saw Mr. Knutson's statement?

Mr. DILLON. Yes.

Mr. LESINSKI. He said that the Board was partial and didn't tell the truth.

Mr. DILLON. That it was a representative report of people that didn't know anything about the industry.

Mr. LESINSKI. For instance, they claimed that they had over 90,000 people working over 40 years old. You heard the testimony of that 40-year stuff?

Mr. DILLON. Yes.

Mr. LESINSKI. Will you make an explanation of that?

Mr. DILLON. We found upon a real investigation that that is not the truth, and it is in my report here. There are 140,000 people today being fed every week in the city of Detroit, and the majority of them are 40 or older.

Detroit is basically a young man's town. Isn't that so?

Mr. LESINSKI. That is right.

Mr. DILLON. Why, a man over 40 cannot work on the lines in this industry, and the industry won't deny it. He cannot work on them. They jump around like monkeys. They are producing more cars cheaper today than they ever did before; and they are making them faster.

Mr. LESINSKI. Talking about the line, the average line now runs, instead of moving at one-half a mile per hour, as it used to do, today that line is operated at 2 miles per hour. In other words, it is four times as fast as it used to be.

Mr. WOOD. And four times as much is produced and turned out.

Mr. DILLON. Yes.

Mr. LESINSKI. Now, Mr. Dillon, you probably saw the newspaper headlines that said that Mr. Ford believes in high wages. He was paying $4.85 and he jumped it to $5. But he put a larger pulley on the machines. Isn't that what happened?

Mr. DILLON. Yes.

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Mr. LESINSKI. That was what was in back of that whole thing.

Mr. DILLON. I think it was figured out that Ford as a matter of fact reduced wages. He gave them a larger wage and then he increased their output so that he really got more for the same money.

Mr. LESINSKI. He put in a system where a man worked so many hours and he got a high wage. Then he finishes and is thrown out of work, and another man takes his place. Isn't that what they are doing?

Mr. DILLON. Yes.

Mr. LESINSKI. Another thing that they fooled the people on, especially the veterans, was like this thing last spring where they put in full-page headlines stating that they are going to give the veterans 5,000 jobs. Do you remember that?

Mr. DILLON. Yes.

Mr. LESINSKI. They put those veterans on, and then they threw down another bunch of veterans to put on those additional 5,000. That is the kind of advertising matter that the industry gets.

Mr. DILLON. In the Ford Motor Car Co., as I presume this committee knows, he has established what he calls service men. They are not known to the foremen or anybody else. Their duty is to go about the plant. How many of them there are nobody knows. For the slightest infraction of any rule of the corporation, their duty is to go up and jerk an employee's badge off and send him for his money.

Mr. LESINSKI. That is correct.

Mr. DILLON. Those men are headed by Kid McCoy, the prize fighter, who not only is a great fighter, but he is a great murderer. You know that he slashed his wife's throat from ear to ear. And yet he is in charge.

Then they have Ty Cobb, who sold the Red Sox team years ago. They are all thugs, and murderers, and so on.

And yet those are the men who parade up and down Ford's speed-up system line and pick out men and fire them promiscuously.

Whenever there is a demonstration in Detroit, photographers are out there taking pictures; and the faces in that audience are checked with the employees in the Ford plant to ascertain whether or not anybody who is working for them participates in any kind of labor organization. They are ferreted and weeded out there, as systematically as he makes automobiles.

Ford is the biggest fake in America. He is the most overrated man that ever lived. He has been lucky up to now. He is the biggest employer in this continent. No man can deny that.

Mr. LESINSKI. And cruel.

Mr. DILLON. He is relentless as an employer and unscrupulous as a competitor.

Mr. LESINSKI. Another thing I wanted to ask you is this: It was brought out here that jobs were being sold in all the plants. That is something that people don't know about. You are out of a job, and you go to a dealer. He will say, "Well, if you deposit a hundred dollars on a car, I will get you a job."

The dealer gets you a job for 2 or 3 years. Then, before the car is paid, he is out of a job. He goes to this dealer and says, "I am out

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of a job." The dealer says, "You either pay for this car or we will take the car away from you."

Besides that, I met some people down on the east side and I asked them, "Where are you working?" He said, "Dodge Bros." I said, "How do you stay on the job?" He said, "Well, I give the foreman $5 every pay day, so I stay on the job."

The worst thing was this service department in the Ford Motor Co., that you spoke about. Dodge has what they call a welfare department. There are different types of names for these different departments. All it is is a police department.

They exchange notes. If Ford finds out that you are with some organization, they fire you; and when you apply for a job in any other plant, even in a little tool shop of some kind, they immediately follow you up. They call up that employer and they say, "Well, now, so-and-so is on your pay roll. He isn't any good."

You may say, "Well, he is a good worker."

They say, "No. We will cut your contract off and give you no more work unless you can him."

That is the statement that I put last week in this record. I put all of that statement in, because I knew that that was what the committee wanted to know about these things.

Do you know something about the election at the Hudson Motor Co. and the Ford plant?

Mr. DILLON. Yes.

Mr. LESINSKI. The Hudson Motors promiscuously picked out candidates to run for the respective offices. Isn't it a fact that in conducting that election they as much as told the men who to vote for?

Mr. DILLON. At the Hudson plant?

Mr. LESINSKI. Yes.

Mr. DILLON. I understand that they did.

They have a company union there—the Hudson Industrial Association. Those people were very active in the election. Of course, they were inspired by the company.

Mr. LESINSKI. They have another union, haven't they?

Mr. DILLON. Yes. An independent union.

Mr. LESINSKI. They sent out cards and things. For instance, at different times they sent out different types of bills condemning this independent union. They sent out letters applauding their company union.

Mr. DILLON. I think the company controls both of them. It is that "Heads I win and tails you lose" proposition out there. The Hudson Co. cannot lose.

The CHAIRMAN. Mr. Eagle, did you have some questions to ask?

Mr. EAGLE. I yield to Mr. Dunn. He knows more about it than I do.

Mr. DUNN. I don't know if this is competent or not. Mr. Dillon, you are a member of the American Federation of Labor?

Mr. DILLON. I represent the American Federation of Labor. Yes.

The CHAIRMAN. He is general organizer.

Mr. DUNN. I heard you say that when a man attains the age of 40 he has difficulty in securing employment in Detroit. Is that right?

Mr. DILLON. I think that is a very mild way of putting it.

Mr. DUNN. Isn't that true?

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Mr. DILLON. Yes. That is true.

Mr. DUNN. Isn't it your experience that that is so in practically every industry in the United States?

Mr. DILLON. Not so much so as it is in the automobile industry.

Mr. DUNN. It is true, however. For instance, like municipalities and States and the Federal Government. When a man attains the age of 50, they have rules and regulations and laws that say that they cannot obtain any work.

I remember last year when we had the public hearing on the 5-day bill, many officials at the head of these gigantic corporations in the United States—when they appeared before the committee to protest against the bill, I made it my business to ask them the question whether they had an age limit. Practically every one of them said that they had, either 40 or 45 years of age.

What I want to know is this: What are the people going to do when they attain the age of 40 or 45 and cannot obtain work? Have you anything in mind that you can suggest that Congress can do to keep those people from starving to death?

Mr. DILLON. I think the enactment of the 30-hour bill will help. It will put more people to work—open up work opportunities.

I also think that the appropriation of money to build public buildings would help.

Mr. DUNN. Take an institution that has a rule that they won't employ any person who is over 45. What are you going to do there?

Mr. DILLON. Then we must make a decision shortly whether or not industry in America is bigger than the Government.

Mr. DUNN. I made the statement to the press here about 4 weeks ago that I was one of 14 or 15 who went over to the White House to talk about old-age pensions. Many of the Members from the West were talking about men attaining the age of 65, and putting it down to 60 and getting a pension.

So I asked the question, "What about the men between 45 and 50? What are they going to do from 45 to 60, in the meantime, until they get to be 60 years old?"

Of course, I introduced an old-age pension making everybody old at 50, so that when he is 50 he will get $100 a month pension.

However, I think a solution of this problem would be this: I think if the American Federation of Labor will get behind me, I will do something to solve this problem. I will introduce a resolution to have everybody chloroformed at 50 years old.

Mr. DILLON. I used to think that way, too. But since I got to be 40, I moved that up. So, now I think you had better make it 60, don't you, Congressman?

Mr. DUNN. I was almost——

The CHAIRMAN. Will you yield just a moment?

Mr. DUNN. Yes.

The CHAIRMAN. Perhaps Mr. Dillon will be interested to know that this committee the other day reported out the Lundeen bill, which does not provide for any limit, but says that anybody who is out of work through no fault of his own must be paid by unemployment insurance the prevailing rate of wage of that work that he was doing; and that the funds to pay for this would come out of bringing up your income taxes to the English system—that is Mr. Lun-

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deen's explanation of it—or come out of the big employers of this country, who are making—for instance, as we have been told before this committee, where the Big Four made $779,000,000 profit in a few years; and they are only taxed 2 percent.

That would be one answer to Mr. Dunn's question of what we are going to do about the men when they get to be 40. That man would be taken care of under the Lundeen bill.

Mr. DUNN. I am going to make one more statement, and that is this: When it comes to unemployment insurance and old-age pensions, I am 100 percent in favor of them. But I don't believe that we need to have unemployment insurance. It is not necessary to have it. There is plenty of work in the United States for everybody. But under our present system it is necessary to have unemployment insurance, and I am for it.

Mr. Dillon, I will make this statement here: Here is Mr. Eagle. Here is Mr. Lesinski and Mr. Wood and our good chairman, Mr. Connery.

The CHAIRMAN. Don't forget Mr. Marcantonio. He has just come in.

Mr. DUNN. And Mr. Marcantonio. He is just as bad as I am and just as good. In fact, I think probably every member of this committee is very conscientious, is very sincere, is willing, I believe, to go the limit to bring about a condition in this country where every man and woman who is willing to work will have a job at a living wage.

Mr. Lesinski made a very important statement when he said that these institutions will get their employees to vote for the men that they want to put into office.

Now, Mr. Dillon, it is a fact that there is only one way that we are ever going to be able to solve this problem, and that is to have the American Federation of Labor and every other labor organization to get behind the men, and to devote as much time and be at least as zealous in selecting men to send to office as these big corporations have been and as they will continue to be.

That is why you are not getting the legislation that is necessary to make labor conditions better for the working men—because they control your Congress, they control your legislatures, and they control, in fact, everything that is necessary to have their plans worked out the way they want them.

Now, if all these labor organizations would be just as zealous about getting men down here who would represent labor, if they would center upon men that they have no question about, men who have demonstrated many times in the legislature or in Congress that they are in favor of labor, then you will get action. But you will never get what you want until you get control of Congress and of the legislatures of the various States.

Probably every one of us men on this Labor Committee are 100 percent for the Connery bill and all this other constructive and unitarian legislation.

I think you will agree with me that these big corporations today control the legislative bodies. And as long as they do that you are not going to get a square deal, nor is the poor workingman going to get a square deal.

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Mr. LESINSKI. Will the gentleman yield?

Mr. DUNN. Yes.

Mr. LESINSKI. I don't quite agree with my brother. This legislative body is not controlled by any corporation.

The CHAIRMAN. He is not referring to this committee.

Mr. DUNN. I didn't mean the members of this committee. I included you with the other members that I named. I mentioned Mr. Eagle and Mr. Lesinski and Mr. Wood and Mr. Connery.

The CHAIRMAN. I think every member on this committee has demonstrated many times he is not controlled by any corporation.

Mr. DILLON. I might say this—that if you will scrutinize the record you will find that the American trades union has never forgotten its friends. But when you realize the opposition, the money, and everything that is arrayed against us, I think it is remarkable that we have been able to take care of our friends to the extent that we have.

Mr. LESINSKI. Mr. Dillon, would you say that if in the State of Michigan, say, seniority of rights was established in every plant the way it should be, and besides that, a shorter-hour week was given, would you say that there would be any unemployment?

Mr. DILLON. There would still be unemployment.

Mr. LESINSKI. Do you think so?

Mr. DILLON. Yes. There are thousands of people who came into the State of Michigan who were induced to come in by this corporation. There isn't any question about that.

They advertised in the Southern States, many of them, such as through Tennessee and the Carolinas; and thousands of poor people who were misled through confusion came there seeking employment and to advance themselves in the great automobile industry, with a result that today they are being fed by the United States Government in the bread lines. Thousands of them are there.

Mr. EAGLE. That includes many of our Negro people, doesn't it?

Mr. DILLON. I don't think there are so many colored folks employed in the automobile industry.

The CHAIRMAN. The gentleman from Texas is recognized now if he has any questions.

Mr. EAGLE. I am just sitting here taking in the wisdom from the men who know the details, and I don't care to inject anything except to keep the committee in good humor?

The CHAIRMAN. Are you finished, Mr. Dunn?

Mr. DUNN. Yes.

The CHAIRMAN. Mr. Marcantonio?

Mr. MARCANTONIO. Mr. Dillon, if the Wagner-Connery bill should be enacted into law, as far as labor is concerned they would not need the N. R. A. at all, would they?

Mr. DILLON. In the automobile industry?

Mr. MARCANTONIO. I say, if the Wagner-Connery bill were enacted, labor would not need the N. R. A. at all, would it?

Mr. DILLON. Yes. I think there are parts of the N. R. A. that would be beneficial to labor.

Mr. MARCANTONIO. As a practical proposition I suppose you know the new set-up of the N. R. A.?

Mr. DILLON. In a general way; yes.

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Mr. MARCANTONIO. You know that Mr. Richberg has been placed at the head of the N. R. A. Of course, you are familiar with Mr. Richberg's interpretation of 7 (a)?

Mr. DILLON. Yes.

Mr. MARCANTONIO. What benefit can labor derive if that interpretation of 7 (a) is going to be the yardstick by which the N. R. A. is going to proceed as far as labor is concerned?

Mr. DILLON. No, sir; 7 (a) is a joke and a farce under that interpretation. That is the reason, Congressman, that we are trying to get it made the law of the land, as I understand it.

Mr. MARCANTONIO. Through the Wagner-Connery bill?

Mr. DILLON. Yes.

The CHAIRMAN. If the gentleman will yield there.

Mr. MARCANTONIO. Yes.

The CHAIRMAN. So far as needing to pass the Wagner-Connery bill just to take care of labor disputes is concerned, you know that the N. R. A. got rid of the child labor and the yellow-dog contracts. You know that your hours of labor have been taken care of under the N. R. A. You know that previously the textile industry of the South were working from 50 to 60 hours a week. Now it has been cut down to 40. If you did away with your N. R. A. entirely, you would have to come in and fight for those hours all over again under the Wagner-Connery bill.

Mr. MARCANTONIO. My personal opinion is that labor would be better off on the economic battlefront than by submitting to regimentation under the N. R. A. The way the N. R. A. is now proceeding, it is going to proceed to protect the interests of the large industrialists of this Nation. It is going to continue to be used as a weapon against labor. And in 2 years' time organized labor, and American labor in general, will be worse off under the N. R. A. than it is today. Nothing will be gained through the N. R. A.

If you take the workings of the N. R. A. up to now, with the exception of improvements in wages in certain isolated instances, what actual benefit has the N. R. A. done to the workers?

The CHAIRMAN. Why ask me?

Mr. MARCANTONIO. I will ask that of Mr. Dillon.

Mr. DILLON. I think the N. R. A. has made a substantial contribution to labor. I think it would be a tragedy to discontinue it in its entirety. Rather, I think it should be strengthened and improved.

I think it has brought the people to realize better their responsibility to their Government. It has organized business on a more sane basis. It has taught the citizens to utilize that agency and not proceed in classes or in groups.

There is no question but what the employers and the financial interests will endeavor to monopolize it and use it as they have tried to do with every agency that has ever been set up by the Government.

Thousands of people have organized under the inspiration of this philosophy and this principle; and I think, whether we call it N. R. A., or whatever you may call it, in some form it is here to stay.

Mr. MARCANTONIO. You say if it is improved. What if it is not improved?

Mr. DILLON. Well, I think it would be too bad for our Government.

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Mr. MARCANTONIO. I mean, if this instrument, this N. R. A., is not improved. And all indications are they are not going to improve it as far as labor is concerned by the appointment of Donald Richberg.

I have known Mr. Richberg personally. I think he is a very capable person. I simply disagree with his views. If men like Mr. Richberg continue at the head of this N. R. A., the result is going to be that the N. R. A. is going to continue to be used as an instrument for the exploitation of labor.

Mr. DILLON. I think the answer to that is this: Unfortunately, the President of the United States, in some manner, or by some body or some group of people, has been surrounded by and been advised by people who are not in harmony with or who don't understand what is transpiring in this country with reference to the problems of labor.

My personal opinion is that it can be laid squarely on the Department of Labor. That is what I personally think, and I am responsible for that statement.

I think what we need is a new Secretary of Labor.

Mr. EAGLE. There are two of us who would like to have that.

Mr. LESINSKI. I am with you, also.

The CHAIRMAN. Mr. Marcantonio.

Mr. RAMSPECK. I would like to ask a question if Mr. Marcantonio will yield.

Mr. MARCANTONIO. Yes.

Mr. RAMSPECK. Don't you think that under the present set-up in the N. R. A. Mr. Richberg's influence has been lessened rather than increased?

Mr. MARCANTONIO. I don't think so. Knowing Mr. Richberg as I do, I think that with his charming personality and his superior intellect, he is as a matter of fact going to have a dominating influence.

I think that whenever Mr. Richberg sits down at a table with the three or four other gentlemen, it is Mr. Richberg's opinion that is going to dominate, plus the fact that he has the backing of the administration. He speaks as the spokesman of the administration, and his word is going to be law.

I predict that that is what is going to happen, and 6 months from now the gentleman from Georgia will agree with me.

The CHAIRMAN. Mr. Gildea.

Mr. GILDEA. Isn't it a fact that Dr. Wolman went on this Board as an adviser to labor?

Mr. DILLON. On the Automobile Labor Board?

Mr. GILDEA. On the National Labor Board.

Mr. DILLON. No. That is not my understanding. He is a member of the Labor Advisory Board, but he was not in any sense an adviser to the American Federation of Labor. He has maintained himself on the Advisory Board, I believe, by the aid of the Secretary of Labor and inspired by her, as I understand it.

Mr. GILDEA. But at the time that he was appointed his appointment was hailed as a victory for labor. I remember reading so at the time he was appointed.

The CHAIRMAN. Not by the Federation of Labor.

Mr. DILLON. No.

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Mr. MARCANTONIO. You mean, when he was originally appointed?

Mr. GILDEA. When he was originally appointed. I remember that by the papers of the country his appointment was hailed as a triumph for labor.

Mr. DILLON. We misjudge things occasionally, too, Congressman.

Mr. GILDEA. Let us get to this misjudgment. When they established this Board, as you say, of reformers and welfare workers, or surrounded the President with them we established this Board; and the first adverse decision will also be a slam at whoever makes it. When they don't decide 100 percent for labor, they are going to be slammed.

Mr. DILLON. The record does not reveal that to be true.

Mr. GILDEA. We will take the record. Mr. Thompson was the third party in a code settlement some years ago, and the statement was made that Thompson sold out. We have to look at the third body as sitting in there trying to settle differences between the other two.

Mr. DILLON. That is right.

Mr. GILDEA. And wherever a decision is adverse, instead of trying to give credit to Richberg, Wolman, Thompson, or whoever happens to be the third party, you immediately start pulling the pins from under him.

Mr. DILLON. There is no one who cooperated with Dr. Wolman more than I did. I worked with Wolman and insisted that our people everywhere conform to his rulings. I went into union meetings and insisted that our people refuse to do other than to conform to the rulings of his Board.

We did give Wolman support. We never pulled a pin out from under him or anybody else.

Labor never expected a decision of any council or any board that was ever set up through my knowledge in the 25 years of my experience to be perfect. We will break even with any employer or any group when we don't get a square shake from this board.

The first thing that they did was to crucify the labor member. And they have never made a decision. The record shows that this Board never did. It was only a board of mediation. They consulted General Motors; and, if it was agreeable to General Motors, that was the ruling of Mr. Wolman.

The Detroit Free Press yesterday held Dr. Wolman out as a possible candidate for Secretary of Labor, saying that he had great things coming to him for the service that he had rendered.

We never criticized the Board. Twenty-two years ago President Wilson appointed a board. It was not prolabor. It was not proemployer. The records show, Congressman, that we worked with that board.

We have conformed to every rule that was ever set up by any commission that we agreed to. We went down the line with this board, even if we didn't like it, and never complained until they just simply made it impossible for us.

Mr. GILDEA. I think that with Mr. Phil Murray associated with Mr. Richberg on this new Board, I am convinced that labor is going to be represented.

The CHAIRMAN. Mr. Richberg represented railroad labor organizations for years.

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Mr. GILDEA. Yes.

The CHAIRMAN. In the United States Senate, the deliberative body of the Congress of the United States, three notable Senators, namely, Wagner, of New York, Norris, of Nebraska, and, I think it was, Hatfield, of West Virginia, and Wheeler, of Montana, set out exactly what they meant, what Congress meant, by 7 (a). They set it out very clearly.

They said that it meant abolition of company unions. That is what they were trying to do when they wrote 7 (a).

Then Mr. Richberg, who was general attorney for railroad labor organizations, who appeared before congressional committees any number of times fighting for labor, when he is put in the position of interpreting that, he interprets it exactly against what Norris, and Wagner, and Wheeler, and Hatfield said was the wish of the Senate of the United States, which they voted upon, and the House voted upon; and he says, "Congress is all wrong. This is what 7 (a) means"; and as a result of that you had your automobile trouble, your textile strike, your longshoremen strike. All the strikes of labor today have been caused by Mr. Richberg, and he is no friend of labor.

Mr. WOOD. And his decision was absolutely contrary to an Executive order of the President.

The CHAIRMAN. Yes.

Mr. WOOD. Which interpreted section 7 (a).

Mr. MARCANTONIO. If you read his speech which was delivered yesterday, which was mentioned in the morning papers, you will find that he makes a speech in which he says that the wealthy alone can save the N. R. A.

Mr. WOOD. I would just like to make an observation in connection with Mr. Marcantonio's statement about the N. R. A. and its position on labor.

Labor does not hold the same fear as Mr. Marcantonio. Labor is not at all disturbed about the detrimental features of the N. R. A. We realize that it has abolished child labor to a large extent. It has to a large extent abolished the yellow-dog contracts. It has raised from absolute and abject wage slavery millions of workers who have now had an opportunity to organize.

For instance, the cotton-textile workers of America. It has elevated their living standards. And the labor movement is not at all jealous about who is responsible for elevating the conditions of mankind. Labor does not want to take all the credit themselves. They are not jealous at all about who gets the credit. But they do know that the National Recovery Act has been a great blessing to the workers of this Nation.

But the only criticism that labor has toward the National Recovery Act is the manner in which it has been administered. So far as the administration of section 7 (a) is concerned, labor does feel—and I believe I am in a position to state how they feel about it, because I have talked to numbers of them since the new set-up—insofar as Mr. Richberg is concerned, as has just been well stated here—as representing 21 central railroad organizations for nearly 20 years as their well-paid legal counsel, he did in his decisions betray labor. John L. Lewis, president of the United Mine Workers, in his language said that Richberg sold organized labor down the river.

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Now, Mr. Richberg changed his view. Whether he changed his principles or not I don't know.

But I am sure that labor feels sure that with Phil Murray, the vice president of the United Mine Workers, upon that Board labor is going to get representation there, and that there will be a great balance there; that Mr. Richberg is not going to be the dictator; that Mr. Richberg's decisions and his actions will be largely governed by a decision of that Board and not the decisions of Mr. Richberg.

Mr. RAMSPECK. Don't you think that his influence will be lessened in the present set-up?

Mr. WOOD. In a large degree. Indeed it will. He is not the Donald Richberg that he was prior to this set-up. He is not the czar now. He was considered the czar.

Mr. MARCANTONIO. Will the gentleman yield?

Mr. WOOD. Yes.

Mr. MARCANTONIO. There is such a thing as an instrument like the N. R. A., after having accomplished certain benefits, that that instrument can be used to the detriment of the American working class, can it not?

Mr. WOOD. I will be frank with you, Mr. Marcantonio, that the organizations of employers and the forces of big business have exerted every possible human effort in the past 12 months to destroy the N. R. A.

After they have taken the advantage of the 4 or 5 sections that have helped them, or, rather, I might say, which were a practical mandate that every employer in the country would have to belong to their trade association; or, if they did not belong, they were compelled to agree to abide by the decisions of the majority of the members of the trade association in their trade—it is generally understood that they have done everything possible within their power in the last 12 months to destroy the effect of the National Recovery Act insofar as labor is concerned. And I don't think that they or any other group of men will ever become so powerful in the future that they will destroy the benefit of the N. R. A. or turn its purpose and meaning and effect toward the enslaving of the worker.

Mr. MARCANTONIO. The point is this: The N. R. A. is a good thing if it is handled properly; and it is a bad thing if it is handled improperly. It all depends on who is going to control the N. R. A.

You will find that the manufacturers' associations and the other employers' associations are not going to show much opposition to the continuation of the N. R. A., because they are going to realize that if they can control the N. R. A. they are going to use the N. R. A. to regiment labor to a low economic status in the United States. If you find any opposition you will find that the real opposition to the N. R. A. is going to come from the militant workers of the United States.

Mr. DUNN. I want to substantiate the statement that was just made. I have received already letters from my district—I represent a big steel district—from corporations to continue the N. R. A.

Mr. MARCANTONIO. So have I. I have received a telegram from the Endicott-Johnson Co. yesterday saying that they wanted the N. R. A. continued.

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Every single telegram that I have received during the last week has been from employers who wanted the N. R. A. continued.

The labor unions of my district—and I am talking about the city of New York—have not come out as yet for the N. R. A. When the proposition is put squarely before the rank and file of labor unions of the city of New York, I will venture that the result there will be against the N. R. A.

Mr. DUNN. I would like to say one more thing, Mr. Chairman.

The CHAIRMAN. Mr. Lambertson has not had a chance yet.

Mr. LAMBERTSON. I will yield to the gentleman.

Mr. WOOD. Just a minute. The clothing manufacturers just testified before the Senate committee on this Wagner bill. Mr. Curley was before them for 4 or 5 days. He represents the majority of the largest clothing manufacturers in the country. And Mr. Curley in no uncertain terms every time he appeared before that committee bitterly protested against the continuance of the N. R. A., and, of those that I have spoken to, nine-tenths have been for the abolition of the N. R. A. so far as section 7 (a) is concerned.

Mr. MARCANTONIO. You are going to see the employers in every large city here opposing the discontinuance of the N. R. A.

Mr. WOOD. The employers in Kansas City are certainly not in favor of it. We may be just a suburb of New York, but we have quite large industries.

Mr. MARCANTONIO. We are not far away from the time when the N. R. A. question is going to come up, and you are going to see that the big industrialists of the country are going to ask that the N. R. A. be continued.

Labor is just going to get a sop. It is going to get a sop, just like its delegation did at the White House. It is not going to get a square deal. They are just going to play along with this N. R. A. And 6 months from now Mr. Dillon and every other representative of organized labor is going to come back before this committee and is going to ask for the N. R. A. to be repealed.

The CHAIRMAN. Mr. Schneider, do you have any questions to ask the witness?

Mr. SCHNEIDER. No. I have not.

The CHAIRMAN. In reference to this conversation that has been going along, it is very interesting to read what Will Rogers says—and, of course, I only know what the papers say—that after President Green and Mr. Richberg and Mr. Lewis conferred at the White House, Mr. Murray was put on this board. The newspapers said it looked as if labor would get some more representation in the set-up of the N. R. A.

I say, as the committee well knows, why don't they do the job right? Not by handing labor a little something here or there. Why don't they report the bill that this committee unanimously reported for equal labor representation on the code authorities? You will have every manufacturer in the country against it and every labor union for it. It is the right thing.

Mr. MARCANTONIO. You are right. And why does not the administration pass word down to the Rules Committee to give the Connery bill a rule so that Congress can pass this bill?

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Mr. DUNN. As I said just a moment ago, I can substantiate what Mr. Marcantonio has said, because I have received many telegrams urging that we continue the N. R. A.

However, Mr. Chairman, I have also received telegrams and letters opposing your measure, the Wagner-Connery measure.

And, just as Mr. Marcantonio said, why don't they get a rule so that when this is reported out of the committee, and the administration has endorsed it, Congress can pass this bill; and then the people of the United States are going to get a square deal.

The CHAIRMAN. I want to say to Mr. Dillon that I feel very deeply for him. I know, of course, the position of labor. I know how hard they have worked. I know what you are up against as a labor leader, an honest labor leader, fighting on behalf of your men for decent wages and decent hours. I know that you are caught between the manufacturer on one end and the employer on one end and the men behind the organization on the other end. He is likely to be accused of selling out his organization. It is a difficult thing.

But I hope that labor won't be fooled by the appointment of Mr. Murray, which is just a little sop thrown to labor; and then the whole code set-up in your textiles and cigarettes, and your automobiles and all of those, to have those men still writing the code.

On this new code we have been trying to get the code reopened. The employers, who wrote the code, say, "We won't let you open it." And he is backed by the code authority and by the N. R. A. They have refused to let us open the code, which they set the opening of for April 16.

Now, I hope that labor will not be sucked into this like they have been in the past.

Mr. WOOD. I don't think we ought to be worried that labor will be fooled. Labor has had considerable experience with that.

Mr. MARCANTONIO. I hope that the leaders of labor—and they have a tremendous responsibility today—will realize that a smile from the White House will not solve these economic problems.

Mr. WOOD. We know that without anyone telling us.

I just want to make one observation here. Sometimes labor is blamed for being too hurried. In this particular discussion labor is blamed for not taking any action or not exercising any disposition to go straight ahead and take a short cut.

We realize that we have had a democratic government here for over 150 years, and our problems are not solved. The labor movement has been building surely but steadily for more than 50 years, and yet we realize that we have problems. All of us do. Every man realizes that you cannot solve everything at once.

If we are going to solve all questions at one session of Congress or of the legislature, that would be fine. If we were all perfect, of course, it would not be necessary to have more than one session of Congress.

But, naturally, we all being human and subject to error, any kind of initial legislation, I don't care who has ever drafted it, in the history of the world has never been perfect. And that is the position that labor takes upon this legislation, and that is the position that everyone else that knows anything about legislation takes.

No law has ever been perfect. No men can ever say that there has ever been a law enacted in this United States or in the world

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that in a few weeks or a few months or a few years was not bound to have something wrong with it.

So we are continually and constantly catching up on our mistakes and our shortcomings.

Labor is not going, I am certain, to be disillusioned by the appointment of Phil Murray. I know him very well. He is a very able man. I can assure you that labor will get representation.

Mr. MARCANTONIO. What the gentleman forgets is this——

Mr. WOOD. Pardon me. Labor is not disillusioned. Labor won't forget that in the administration of the National Recovery Act they have been discharged by the wholesale for joining local unions.

Employers are not going to sit down and just let the law go into full force and effect. Labor realizes that we will have to fight even though you may enact any kind of law in this Congress. Labor realizes that still we will have to fight.

Mr. MARCANTONIO. What the gentleman forgets is that the history of labor up to about 2 years ago has taken the stand that it wanted to be let alone and it would battle its own way.

Mr. WOOD. No. That has not been labor's attitude. You are mistaken.

Mr. MARCANTONIO. Yes; it was.

Mr. WOOD. If it had been, we would not have had the national legislative committee of the American Federation of Labor.

Mr. MARCANTONIO. If you will permit be to make my statement, you will agree with me, I think.

Mr. WOOD. No.

Mr. MARCANTONIO. Labor in the past has never attempted to curry Government interference in any of its struggles. Two years ago or a year and a half ago, when the N. R. A. labor policy changed, for the first time in the history of the United States, the regulation of labor conditions was put in the hands of the Government.

Mr. WOOD. Well, but——

Mr. MARCANTONIO (interposing). Just a minute. So that therefore, today, labor finds itself at the crossroads. Their existence today is going to be regulated and controlled by governmental agencies.

If those governmental agencies are going to be used against labor, we may as well make up our minds that labor is going to be fascicized labor in America. If it is going to be used for labor, that is all right.

It is just a question of the practical application of it. If the N. R. A., which is a governmental instrument—if that instrument is to be used against labor, and labor has now subjected itself for the first time to Government control—if that governmental instrument is going to be exercised against labor to get your American Federation of Labor and to get your unions, you are just going to become fascicized in America.

Mr. WOOD. I agree with you there.

Mr. MARCANTONIO. The years will tell.

Mr. WOOD. There isn't any disposition on the part of anyone to disagree with that.

Mr. GILDEA. I would like to ask this one question.

The CHAIRMAN. Mr. Gildea is recognized for a question.

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Mr. GILDEA. I would like to ask the gentleman, as a representative of labor, if he can see any objection to an amendment of the unfair labor practice laws to insert in the unfair labor practice clause the blacklisting of a man or the driving of him out of a union because of what might be termed overzealousnes, or, I will take the word " over " out and say just zealousnes in fighting labor's fight. Do you get the picture clear?

Mr. DILLON. Do you mean to make the blacklist illegal?

Mr. DUNN. The blacklisting of labor.

Mr. GILDEA. What I have in mind is the injunction that has 29 men in jail up at Wilkes-Barre. Pennsylvania has claimed that we got away from injunctions. But the Anthracite Miners' Union, an independent organization, finds Mr. Maloney and 29 of his fellows in jail. It finds other men blacklisted from their jobs and driven out of the union.

Now, do you think that those men should be deprived of union membership because of union activities, even though they are in conflict with recognized union authority?

Mr. DILLON. You mean, where there is a dual union organization?

Mr. GILDEA. You have dual unions, but not dual organizations. When you drove Thomas Maloney out of the union——

Mr. DILLON (interposing). I didn't drive him out.

Mr. GILDEA. I don't mean to accuse you personally. But when Fred Blaise was driven out of the union, we didn't have a dual union. We had men inside the organization fighting the organization.

Mr. DILLON. Well, I think the answer to that would be that the miners must set their own house in order, just as a business enterprise which comes in here with its clothes all mussed up and wants the Government to enact a law to set their own house in order. I would be opposed to that.

The miners in Pennsylvania, just as the automobile workers and any other group of our citizens, must work out to a very large extent their own destiny. The function of the Government, as I understand it, is to see that the rights, the basic inherent rights, of free men are always preserved for them. That is the purpose of Government.

Mr. GILDEA. I agree with that a hundred percent—that the privilege of free men is to maintain their rights in their organization. But they should not be driven out of the union. And, when we write a list of unfair labor practices, we should so list that.

The CHAIRMAN. Will the gentleman yield?

Mr. GILDEA. Yes.

The CHAIRMAN. We don't say anything to the employer about who shall belong to his trade association or who can belong to his corporation. Why should we tell the labor union who can belong to their union? We don't interfere with the union.

Mr. GILDEA. It is not a question of who may belong. It is a question of whom they may disenfranchise; whom they may put out.

The CHAIRMAN. If the employer wants to throw a man out of his trade association, we don't interfere with that. Why should we tell the union who can be in the union organization and who cannot be members of their organization? That is interfering with a matter that they should settle for themselves.

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Mr. DUNN. At the present time the State of Pennsylvania has dual organization. They have the United Mine Workers, and they have the National Mine Workers.

Now, I think it is a fact that in the western part of the State I believe Mr. Maloney represents one organization and you the other. I think he represents the United Mine Workers and you what is called the National Mine Workers. And right now they are having a lot of trouble.

In other words—and I don't like to bring this up, because it is a rather delicate subject—but you have heard me make the statement before this committee to those who are representing labor organizations, what they have done last spring.

So I would like to know now if Mr. Murray, since his name has been mentioned and has been put on this Board, if he will also represent that coal-mining organization.

Mr. WOOD. He will represent all of them. He represents the industry too.

Mr. Chairman, I don't see any reason why this congressional committee should try to air the internal affairs of organized labor. I think also that this Congress and this committee will do well if we get our own house in order.

We have been trying to air the differences among manufacturers, as the chairman has well said. So why drag something that doesn't concern us at all into it? Why should we try to dictate to labor and tell labor what they should do? We are not doing that to the employers. They can carry on their own organization as they see fit. So I don't think that that is within the purview of this committee.

The CHAIRMAN. Of course, it is entirely in order for the gentleman from Pennsylvania——

Mr. DUNN. Will the gentleman yield?

The CHAIRMAN. It is entirely in order for the gentleman from Pennsylvania to offer any suggestion on the amendment to the bill that he might want to question Mr. Dillon about.

Mr. GILDEA. It is entirely in order for me, I believe, to do that. But the gentleman answered his own question when he said that Congress has been meeting for years and years and trying to perfect laws. We are seeking now a law defining what are unfair labor practices; and I think that that is an unjust labor practice.

Mr. DUNN. I agree with the gentleman.

Mr. WOOD. In what way does this interfere with the organization of employers or employees? Neither this bill nor any legislation before this Congress seeks to regulate or adjust any of those activities. As Congressmen it is within the purview of members of this committee to ask any question about any internal affairs that they want to. I am just trying to point out that it is not the business of this Congress or the business of this committee to try to waste our time here by trying to regulate any organization with respect to their internal affairs.

The CHAIRMAN. Mr. Gildea, if I might interject there: Even the courts have recognized that there must be discipline in the union organization or that an organization can throw out any member for cause that they see fit. Of course, he has always his remedy in the courts.

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Mr. GILDEA. But certainly it is not because he has opposed the officials of an organization.

The CHAIRMAN. I am not going into the merits of that.

Mr. GILDEA. Let us just take what happens in Congress.

The CHAIRMAN. I mean, as far as Congress interfering with the labor union and saying that they cannot fire these men or telling them that it is an unfair labor practice for them to throw a man out of the union. They always have their remedy in court. The courts recognize that discipline is necessary in union organization.

Mr. GILDEA. We have had to discipline Democrats for combining on this committee. While we could not force them out of Congress, still we had to have that "follow the leader" policy.

The CHAIRMAN. You are not referring to me?

Mr. GILDEA. I am not from that anthracite district. I am from the United Mine Workers district. We haven't any anthracite miners there. But we have 40 percent of our people idle. There are no labor set-ups for them.

In Pennsylvania they talk about coal bootleggers. The coal operators and the union mine workers have a movement to eliminate the bootleggers—men who are forced to make their living. And that 40 percent is not being spoken of by an organization to which they have paid dues for 30 years. And I feel free to offer this amendment to this bill; and I will offer it both here and in the House, because I think it is needed.

The CHAIRMAN. I might interject here that I hope that you will have the opportunity to offer it in the House. So far everything that this committee has brought out has never got on the floor of the House.

Mr. EAGLE. Talk about wasting time, Mr. Patman showed us that the way to put across legislation that will please the workers is to go out and organize beforehand and organize among the workers. Take the way he put over the bonus bill.

The CHAIRMAN. I think you will find on that 30-hour bill that for a week we had a petition on our desk, and we got 83 names on it.

Mr. GILDEA. It isn't on your desk now.

The CHAIRMAN. It was on the desk, and we got 83 names to the 30-hour week bill which had been reported unanimously by this committee. The veterans and the labor proposition are two entirely different propositions.

Mr. LAMBERTSON. Was it organization that put Patman's bill over, or was it constant dripping of water for 3 years wearing away the stone?

The CHAIRMAN. Many Members came into Congress on the pledge that they would support a soldiers' bonus bill. So it was not organization of the House that did it. It was organization back in their districts.

Mr. GILDEA. And not a few of them, like myself, came in in support of the 30-hour bill; and we haven't seen it yet.

Mr. SCHNEIDER. Mr. Chairman.

The CHAIRMAN. Mr. Schneider.

Mr. SCHNEIDER. I think that the committee should refrain as much as possible from argument between members of the committee in public hearings. I think we should confine ourselves as much as we possibly can to hearing the witness.

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The CHAIRMAN. We heard the witness and then these interjections came afterward.

I have always held the belief, and I think quite a few of the members of the committee do, that in a committee of Congress anything that they may say in discussion or otherwise could properly be heard in public. We don't do ourselves or the country any harm by airing any opinions that we may have. Of course, if any member of the committee or the committee does not want anything in the record, I am perfectly willing to keep it out.

Mr. LAMBERTSON. Don't you think, Mr. Chairman, that it would be better not to have in the printed record the controversy that went on here a little while ago?

The CHAIRMAN. That is entirely up to you gentlemen.

Mr. LAMBERTSON. It is all right to discuss it, but I don't think it should be in the record.

The CHAIRMAN. It is entirely up to the committee.

Mr. WOOD. I would rather let it stand of record. Let the record speak for itself.

The CHAIRMAN. I do not wish to appear domineering, but I think there is no harm in having it in the record.

Mr. WOOD. I have heard Senate and House committees have a regular dog fight in the committee. There was one over in the Senate the other day.

Mr. LAMBERTSON. I will bet that it goes out of the printed record.

Mr. WOOD. No; it is in the record and it was in the papers.

Mr. LAMBERTSON. It may be in the papers, but I don't believe it will be in the record.

The CHAIRMAN. I have never seen much harm come out of this discussion.

Mr. WOOD. This labor committee has been having fine hearings.

The CHAIRMAN. Personally, I believe that as a result of the hearing we held a few weeks ago on the equal labor representation on the code authority—I think that that was the reason why Mr. Murray is there today.

Mr. WOOD. Yes.

The CHAIRMAN. Maybe if we keep this thing up that will be the reason, because the newspapers publish what is said here, the opinions of labor men and people on the codes, that they want to save the N. R. A. I think that that is why Mr. Murray is on there. Maybe if we talk a little louder we will get some more labor men.

Mr. DUNN. I agree that the American Federation of Labor has done a good work. Just as Mr. Wood says, we cannot get everything done at once.

The CHAIRMAN. Mr. Schneider, I understand, has been trying to get recognized. Pardon me. Mr. Schneider.

Mr. SCHNEIDER. I was just wondering if the witness is through here. My idea was that the witnesses came to testify, and we ought to hear them. If we are going to have a meeting for discussion, we can have an executive session and discuss as long as we see fit.

The CHAIRMAN. I think Mr. Dillon has enjoyed this discussion himself. His testimony has been concluded, Mr. Schneider, before this time. And he is the only witness this morning.

Mr. DILLON. Mr. Chairman——

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The CHAIRMAN. We will be glad to hear from Mr. Dillon if he wants to make any further statement.

Mr. DILLON. I want just briefly now to express my appreciation to your chairman and through him to the members of this committee for the privilege of saying a few words to you in behalf of this bill.

One of the gentlemen on the committee has made the statement that labor, he hopes, will not fail to stand up; that it will not yield to the customary smiles and the sops that are handed to it.

Labor today, as always in the past, has a difficult task. A responsibility, I think, heavier than ever before rests upon the men who represent the labor organizations today. Neither this Government nor any other government, in my humble judgment, can continue and endure indefinitely with 12 or 15 millions of its citizens walking the streets tonight.

Any contribution that we can make to bring to those people the privilege of working, to bring into the homes of those men and to their wives and children the things that they are entitled to, I think will be performing a patriotic and a noble duty. And in saying that I have the privilege of speaking for our men and women and girls working in a great industry, working faster today than ever before.

You all know what a Buick automobile is. I say that because the Buick car is universally known. Today they are coming off the production line one every minute with less people than they ever had in that plant before.

These are problems that not only challenge the ingenuity of our Government and the citizens in general but the labor movement as well.

We are meeting these complex problems as best we can. But I am one of those who believes that labor will receive just what it stands up for and demands and takes through organized effort. We will never legislate ourselves into a millennium, but through legislation with the powers of Government we can preserve certain rights to our men. That right is to freely associate themselves together and through that effort bring to them better conditions of employment.

As I see it, this bill represents the protection and the opportunity for labor's advancement.

I thank you. Mr. Chairman, and I thank the members of the committee very much.

The CHAIRMAN. Thank you very much, I am sure.

Since there are no further questions we will adjourn now.

We will meet on Tuesday. Secretary Perkins is out of the city, so we cannot hear her tomorrow. We will meet on Tuesday in executive session. President Green of the American Federation of Labor will be with us at that executive session.

(Whereupon at 12:15 p. m. an adjournment was taken.)

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LABOR DISPUTES ACT

WEDNESDAY, APRIL 3, 1935

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

The committee this day met at 10:45 a. m., Hon. William P. Connery, Jr., chairman, presiding, for further consideration of H. R. 6288.

STATEMENT OF THE HONORABLE FRANCES PERKINS, SECRETARY OF LABOR

The CHAIRMAN. The committee will please be in order. Our witness this morning will be Secretary of Labor Frances Perkins. We are, of course, very happy to have her with us, because we know that her testimony will be a valuable contribution.

Secretary PERKINS. H. R. 6288 seeks to clarify the situation established when section 7 (a) of the National Recovery Act was passed and to establish and promote the appropriate and fair kind of collective bargaining desired.

The bill has three principal objectives: First, to clarify and make a part of the general law section 7 (a) of the National Industrial Recovery Act; second, to create a National Labor Relations Board to hold elections to determine who or what organization shall represent employees for the purpose of collective bargaining, and to prevent certain enumerated unfair labor practices; and, third, to provide for machinery by which the orders of the board may, if necessary, be enforced in court.

I

Section 7 (a) of the National Industrial Recovery Act does not represent an entirely novel constribution to American law. For many years its principles have been recognized, and have found utterance in various Federal laws. Without attempting to review all such legislation, it is enough to recall the Railway Labor Act, the amendments to the Bankruptcy Act, and the act establishing the post of Federal Coordinator of Transportation. But though the principle is not new, the details are perhaps not yet clearly understood by the country as a whole. This is due in part to the fact that the meaning of the statute has so far had to depend upon administrative interpretations in isolated and not always accessible cases. For almost 2 years now administrative boards have been

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hammering out the details in separate decisions, which, it seems to me, Congress should review and piece together in a single pattern. By doing this, Congress will make it obvious to employers, workers, Government officials, and the courts just what the law was intended to mean, and how far Congress accepts, and how far it rejects, prior administrative interpretation.

These 2 years of experimenting, feeling the way and studying the principles involved have been wholesome and useful, but I think that the time has come for Congress to say just what it wants to go and what limitations it had in mind when it passed section 7 (a) of the N. I. R. A. The cases that have been developing and the material coming from them will be an assistance to the Congress in determining what was meant and what it wishes to reiterate as a permanent part of the laws of the United States of America relating to collective bargaining.

This procedure of congressional clarification will have a two-fold effect, I hope; first, it will make for better cooperation between the public and the Government, for most people, employers and workers alike, will cooperate as soon as they understand the rules of the game.

Much of the labor difficulty between employers and employees in the last 2 years has been due to an honest misunderstanding on one side or the other of just what was the meaning of this particular act. Clarification of it will make it possible to cooperate along clear-cut lines.

Secondly, this procedure of congressional clarification will improve the chance of the Government winning its cases in court, for the judges will then realize that the interpretation which is being presented in court is the interpretation of Congress as well as of the executive branch of the Government.

I am not going to analyze every aspect of this clarification, as it is worked out in the bill before you, but I am going to stress three points and then pass on to other matters.

First, the bill is applicable to every employer whose business is in or affects interstate commerce and not merely to such employers as are subject to N. R. A. codes. In one of its recent decisions the National Labor Relations Board decided that the employers who are not subject to codes are not subject to section 7 (a) and this result, though probably necessary under the present statutes, seems to me unwise, and ought to be overruled. It seems to me that if the principle of section 7 (a) is sound—as I believe it is—the benefits of that section should extend to those who work for any employer subject to Federal jurisdiction.

Secondly, the bill adopts the principle of majority rule. I need hardly explain to this committee the meaning and purpose of the majority rule. The rule is intended to prevent an employer from making one agreement with one group of his workers, and another agreement at different rates of pay, and so forth, with another group of his workers who perform the same sort of labor. It is a rule also intended to prevent an employer from playing off one group of workers against another, to the detriment of both, and with the object of creating dissension rather than collective agreement. "Majority rule" has been a principle adopted by the old War Labor Board, the Wagner Labor Board, the National Labor Relations

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Board, the President in executive orders creating the steel and textile boards, and Congress itself in passing the Railway Labor Act. Even employers, in formulating a program for their own code-making, have urged the National Recovery Administration to adopt for them the principle of majority rule; and it can hardly be supposed that they would not want the same principle applied to their workers, particularly when our whole system, economic as well as political, is bottomed upon this rule.

It is common in our thinking that the majority shall rule. Of course, under that theory many minorities do not find themselves being represented, but liberties have not been greatly impaired by the rule of the majority, and we have made progress toward democracy with that, recognizing always that there are unrepresented minorities on the political as well as the economic side.

Third, the bill establishes four so-called "unfair practices." I am in favor of taking these or other appropriate steps to eliminate all discrimination directed against a worker because he joins a union. A worker should be free to join any organization of his choice; and there should be outlawed every form of coercion, interference, intimidation, or discrimination aimed at that freedom. In cases in which he exercises coercion or interference through a company union, an employer violates the intent of section 7 (a) and I am glad to note that such violation is directly forbidden in the bill.

II

In addition to clarifying section 7 (a), the bill before you is designed to create on a more permanent statutory basis the National Relations Board.

Shortly after the National Industrial Recovery Act was passed, the President appointed a National Labor Board under the chairmanship of Senator Wagner to deal with the problems involved in section 7 (a). This Board continued to function until, last year, the Seventy-third Congress passed Public Resolution No. 44, which authorized the President to establish such board or boards as he deemed proper to handle elections and to investigate labor disputes and practices of employers and employees.

Prior to the existence of the National Industrial Recovery Act, and prior to the Wagner board, nobody in this country heard of elections in a plant to determine who should represent the workers for purposes of collective bargaining. Because of the great impetus given by section 7 (a) of the N. I. R. A., and because of the variety of attempts made to establish representations, there came to be much confusion in which the employers would not agree as to the particular committees which were to represent the employees. Sometimes there were two groups in the same plant, each claiming to represent the employees. The Wagner board hit upon the device that is common in holding elections, namely, it took a vote to see whom the employees wished to represent them, and therefore they got into the practice of holding elections. They held many elections and that came to be regarded as the proper way to determine whom the workers wanted to represent them for purposes of collective bargaining. Handling of elections, therefore became an important item, because, obviously, the rules of the elections should be the same in every place

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and the method of holding them should be the same, so that it became important that there should be an authority of some sort to handle them.

Pursuant to the authority conferred by Public Resolution 44, the President established five different boards: The National Labor Relations Board, the Steel Labor Relations Board, the Textile Labor Relations Board, the Board of Inquiry for the Cotton Textile Industry and the National Longshoremen's Labor Board, the last two of which, having completed their work, have now been dissolved.

These boards were not appointed with the expectation of making them permanent boards. They were appointed for a particular purpose and when they had finished their work the resolution provided fer the discharge of those committees.

We have learned from the experience of these boards enough, I believe, to justify us in establishing the National Labor Relations Board upon an enduring basis.

It is clear, of course, that any such board, in order to render impartial decisions, must have judicial independence, and I thoroughly agree that its decisions should not be reviewed by any person in the executive branch of the Government. If the board makes errors, those errors will be subject to correction in the courts of the land, but they should not be in any way subject to administrative supervision.

But although I believe that the Board ought to be free to make whatever decisions it believes that the facts justify, I do not favor setting up the Board as an entirely separate agency disassociated from all the permanent executive departments.

The National Labor Relations Board, it seems to me, should be made a part of the Department of Labor, and its employees, while selected in the first place by the members of the Board, should not be appointed until they are approved by the Secretary of Labor.

The bill before you sets up the board as a separate, independent agency. and I think that would be a grave mistake at this time.

Mr. KELLER. What is your remedy?

Secretary PERKINS. The Board should be established in the Department of Labor. It ought to be free to make its decisions, but it ought to be associated with the Department of Labor in matters of administration. The Board should utilize the services and the facilities of all branches of the Department of Labor, which are numerous, for investigations, analyses, studies, and conciliation. A board of that kind should do no conciliating but should utilize the administrative activities of the Department of Labor and reserve it own activities for rendering judicial decisions in connection with principles and cases coming before it. It, therefore, would not at any time have many employees; and I think it should have the right to select its own employees, but they should not be appointed without approval of the Secretary of Labor. This should be so in order to establish proper salary ranges for the personnel of this particular branch of the work, and also to prevent duplications and to prevent the establishment of a staff to do work that could be done and sometimes is already being done by other divisions and branches of the Government.

An independent agency tends to overlook the fact that there are other agencies of government which could do part of the investigating, report writing, statistical tabulating, and it tends to set up its

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own subordinate branch, which, I think, is not necessary. I think the approval of the Secretary of Labor for the appointments would be beneficial in bringing this Board in line with the general practices of other executive branches of the Government.

Employer-employee relations and the problems of collective bargaining belong within the normal sphere of a labor department. That arises out of the demands of labor to be assured either of its rights or to be assured of an opportunity to bargain for improvement of its condition. That is certainly a part of the normal ministerial functions of the Department of Labor.

Employer-employee relations and the problems of collective bargaining belong within the normal sphere of a labor department. This is recognized in our various State labor departments and in the ministries of labor in foreign countries. Indeed, it is difficult to imagine problems which are of greater importance in the labor field; and unless the agency which deals with these problems is part of the Labor Department there is danger that there will not be that constant integration of these problems with other labor problems, which is essential if the Department and the Board are to have the greatest possible understanding of the ramifications of their decisions and the greatest possible effectiveness.

Although in theory this cooperation and integration might exist if the Board were separated from the Department, I do not believe it would work out in actual practice.

I am sure that the members of this committee have watched the growth of government with sufficient care to note that once an agency is established as an entirely separate organ in the executive branch of the Government, that agency, or at least many people who are connected with it, are always trying to increase its functions, gain for it a wider jurisdiction, and stress its importance to the Government. Thus a separate labor board, in spite of any restrictions that might be formally laid down, might and probably would engage in conciliation and research. This would mean an unnecessary duplication of functions already performed by the Department.

With the best of intentions and good will in the world, agencies that are not related on the administrative side tend to grow away and build up separate institutions.

But there is something even more serious and more subtle than the increased expense which results from establishing a separate agency of government in the labor field. The employees of such an agency will be so anxious to build it up and justify it in the public mind that they will concentrate on educational and administrative activities rather than on the decision of the specific cases brought before them. We all know that one of the reasons that courts accomplish their duties so well is because they ignore the work of propaganda and administration and devote themselves to a quiet, unimpassioned, and uninterrupted performance of the task of deciding just those controversies which are brought before them.

The necessity of going before Congress to argue for a budget to build up support and for an increased budget and all such things tend to rob the board of its judicial status, which is essential at this time.

Anyone who is really interested in making the proposed Labor Board judicial and as much as possible like a court should favor con-

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fining the board to the decision of cases and the holding of elections and should not encourage it to enter the disconcerting task of administration.

Moreover, if the Labor Board is made a separate agency it will make it more difficult for the general public to understand the set-up of our governmental machinery. An increase in governmental bureaus produces in the public mind increased confusion; whereas there is nothing that promotes justice and efficiency in government more than a simple administrative structure.

The advantages of a simplified administrative structure are apparent in the Government as well as outside of it. The problems of the Labor Board ought to be brought periodically to the attention of the President and the members of the Cabinet. This is hardly likely to be achieved unless the Board is made a part of a permanent department. For if the Board is separate, what regular channel of communication will run to the Chief Executive and the heads of executive departments? What meeting will consider the Board's problems and difficulties except in time of great crisis?

I think that the necessity in the near future years of the President of the United States and the heads of the executive departments being aware of what the labor problems of the country are, of what the employer and employee relationships are in fact and not in theory, is essential to the gradual, realistic, empirical development of a sound labor policy. I think the necessity of the administrative heads of government and of members of committees of Congress being made aware from time to time of the problems coming before this Board is essential. I hold that the regular weekly reporting of the Secretary of Labor to the President in a Cabinet meeting will do more to bring these issues up, not when a crisis is at hand, but in ordinary times, when they can be considered coolly for their real value rather than hastily in the more or less frantic search for some method of settlement, which is the prevailing mood when there is a strike or a lock-out. These should be considered as human problems of the whole population.

I urge that this point be most seriously considered by your committee for I am anxious that the work of the Board should have a place in the regular thinking of the administration, and I know no way that that can be accomplished if the Board is set off apart from all the departments. I fear that separation will mean that the Board and the problems of collective bargaining will enter into the minds of most of us only in times of crisis, and will mean that our ignorance and detachment leave us unprepared to cooperate and to assist.

III

There is one final matter that this pending bill covers. It provides the means by which the findings and orders of the proposed National Labor Relations Board can be enforced in court. One of the weaknesses of the present structure is that the Labor Board's findings have no standing as evidence in court, and a case once brought to court has to be begun de novo. This is a weakness for which we have developed a remedy in other fields.

Congress has provided that certain agencies in the executive branch of the Government shall have the right to compel persons to pro-

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duce evidence, to make findings and orders based thereon, and then to have such orders enforced in court if the court holds that the findings and orders were based upon evidence. Examples of agencies having such powers are the Interstate Commerce Commission, the Federal Trade Commission, the Securities and Exchange Commission, the Communications Commission, the Secretary of Agriculture in the administration of the Packers and Stockyards Act, and the Secretary of Labor in the administration of the immigration laws.

The present bill gives to the Labor Board the same sort of powers that these agencies have always exercised, and it strikes me that anyone who studies our administrative law will readily concede that the Connery-Wagner bill is built upon sound precedent. Indeed, the flexibility and promptness of this sort of administrative procedure is particularly important in the field of labor relations, where justice to both workers and employers consists not merely in a correct but also in a quick decision.

I hope that this bill will pass, and that under the machinery it provides, the rights to which we all believe the workers are entitled can be more effectively realized.

I have some amendments to suggest. I had them written out on a one-page memorandum.

The first is on page 5, line 4, strike out " as an independent agency in the executive branch of the Government ", and insert in line 4, after the word " created " the words " in the Department of Labor." That would establish the board in the Department of Labor.

Page 6, strike out lines 1 to 11, both inclusive, and substitute therefor " or employment. The Board, with the approval of the Secretary of Labor, shall appoint such employees, and, without regard for the provisions of the civil-service laws but with the approval of the Secretary of Labor shall appoint an executive secretary and such attorneys as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services and such agencies as may be provided for by agreement, code, or law. But nothing in this act shall be construed to authorize the Board to appoint persons to engage in mediation, conciliation, or statistical work, when the services of such persons may be obtained from other bureaus or divisions of the Department of Labor."

It is quite important to allow the Board to use uncompensated services. There are situations in which, by agreement, both sides of a labor controversy will agree to a local person of good standing as a mediator, and if the Board can give him authority at times, that will be a useful device and provide a desirable shortcut.

This also provides, of course, that the attorneys of the Board may have authority to act for it in the courts.

The Board should not duplicate the conciliation and statistical services of the Department of Labor.

Page 8, strike out lines 3 to 7, both inclusive. This language should be stricken because it is the function of the Secretary of Labor to study agencies that handle labor disputes. That language directs

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the Board to study the activities of such boards and agencies as have been or may hereafter be established by agreement, and so forth, and requires them to receive from such boards reports of their activities. This judicial board should not be loaded down with administrative duties.

Page 10, strike out lines 1 to 4, both inclusive, and substitute therefor:

tions of work or employment: *Provided*, That nothing in this section shall deprive any individual employee or group of employees of the right at any time to present grievances to their employer.

Page 10, line 5, insert after the word " decide " the words " in each case."

In connection with lines 1 to 4 on page 10, minority groups should have the right to present grievances, but there should not be two groups of representatives.

Page 11, line 6, after the word " empowered " insert the words " to deal."

Page 11, line 7, strike out the words " to prevent " and insert after the comma following the word " provided " the word " with."

Page 11, strike out lines 9 to 22, both inclusive, and substitute therefor the following:

(b) In cases in which another means of dealing with an unfair labor practice or question of representation is provided for by agreement, code, law, or otherwise, the Board, in its discretion, may postpone, or refuse to exercise, its jurisdiction. But such agreement, code, or law, or such postponement or refusal, shall not be construed to prevent or limit the right of the Board in such cases to take jurisdiction under this act at any time in order to assure the effectuation of the policy of this act and the development of a uniform body of administrative interpretation and practice with respect to unfair labor practices as defined herein.

That part of the bill is changed in order to make it clear that also this proposed Board may hear any case involving the act, nonetheless other agencies may hear cases until this Board intervenes. This Board may not take original jurisdiction. This is necessary with regional boards. It would be unwise for that board to have to wait until the National Labor Relations Board authorized it to go ahead, because action, if effective, must be speedy. In accordance with my suggested amendment, the Board need not take regional jurisdiction and then hand the case on. This will make for speed and peace of mind locally, and industries which have specialized problems which may be handled by boards agreed to between employees and employers as a part of collective bargaining will find this helpful.

Page 13, line 3, strike out the words " order requiring " and substitute therefor the words " appropriate order."

Page 13, line 3, after the words " appropriate order ", insert the words " Such order may require."

Page 13, line 5, strike out the words " and to take such affirmative action, including restitution, as will effectuate the policies of this act. Such order may further requires such person " and substitute therefor the words " to restore a worker to his employment, to pay to him such compensation as he would have received if he had not been wrongfully discharged and."

Page 13, line 13, strike out the word " dissolving " and substitute therefor the word " dismissing."

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This change makes it clear that wrongfully discharged workers are entitled to be both restored to their employment and to be given back pay.

Page 17, strike out lines 1 to 20, inclusive. I think that should be stricken so that we shall not have diverse rulings from district courts. We might easily have a great variety of rulings in the district courts.

Page 24, strike out lines 21 to 24, both inclusive.

Page 25, strike out lines 1 and 2.

This is a criminal provision which should be stricken, although it applies only to assaults on employees of the Board. Some confusion might arise in the public mind if it is allowed to remain. I do not believe that the employees of this Board will be assaulted. I believe that the police powers of the States are adequate for the maintenance of peace and order.

I have no further amendments to suggest.

What I have said to you this morning has been a matter of conference with all divisions of the Department that in any way touch this problem, including the Division of Statistics, because its research work touches the problem. The conciliators and mediators and assistant secretaries, and all other persons dealing with this problem, including the office of the Solicitor, have been in conference. We sat for 2 days going over this entire program, and came to the conclusion that this legislation represents the joint opinion of those in the Department who have had most to do with these subjects in recent years. We are conscientiously of the opinion that this represents our best conception of what we ought to recommend to your honorable committee at this time.

The CHAIRMAN. You have made a wonderful statement. You have sold me on the idea of putting this board in the Department of Labor; whereas I had been in favor of having it a separate agency. Without any review of the decisions of this board by the Department and the appointments going to the Secretary of Labor, I agree.

Secretary PERKINS. The idea of such a board with judicial powers is not something new. In several State labor departments there is such a law. Massachusetts, Wisconsin, New York, and Pennsylvania in a modified way, have it. A board associated with the Department of Labor and a part of its administrative machinery, yet in the field of workmen's compensation decisions and in the field of making judicial decisions on appeal in connection with labor laws has absolute authority on the judicial side and cannot be reviewed by the Commissioner of Labor. The State industrial boards in New York, Wisconsin, and Massachusetts are supreme on the judicial side. The commissioners of labor cannot set aside their decisions, yet their administrative work is carried on in the Department of Labor. That has worked out well. We have had 15 or 20 such years of experience in those States. They have big problems. California has this to a modified degree. It is a division of judicial and administrative authorities under administrative law, which is extremely useful, and will, I think, in the long run make for clarity, convenience, and economy.

Mr. RAMSPECK. Do you feel that the time has come when it is a necessary function of the Government to furnish a method of settling disputes between management and labor?

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Secretary PERKINS. The Government has for a long time furnished a conciliatory method of settling disputes and offered machinery of mediation. It has had the power to establish arbitration when such arbitration was agreed upon. This Board, I think, is an extension of a function of Government which had been established. When the Government in 1933 undertook to write into statute law of the country it began dealing with words and ideas for which there was no exact description in court decisions or in law. Mediation and conciliation do not need to be the same thing. The same rule does not apply in conciliation. In conciliation you recommend anything that will close the dispute. It is a compromise. It is a conciliation service. If a law has been passed, then the law must be applied equally and uniformly in each case. The approach must not be the approach of conciliation, because Congress has spoken and there is a law permitting collective bargaining and definite safeguards, rights of workers to be represented in the collective bargaining by representatives of their own choice, so that we say about these words "collective bargaining" and "representatives of own choice" that they proved to be indefinite in disputes in the minds of many honest people. They could not agree as to the meaning of the words. I think the time has come when we should make that, the right of the workers to collective bargaining and to be represented by agents of their own choice, a definite part of the law. If that is done, I think Congress must make it clear what the Congressional intent is in the use of such words as "collective bargaining", and "coercion" and "representatives of their own choosing."

Also, there should be given to the agency the power to see to it that its orders are carried out. In other words, this is a part of our growing experience. When we passed section 7 (a) of the N. I. R. A. we laid the first stone of a labor-relations policy which has never been defined in the United States and which to be sound must grow out of practical experience and not out of theoretical statements applied from the Government down. They must grow out of practical experience of men in their relations with one another. That is what is going on today. It is therefore a very solemn responsibility of the Congress to consider whether these definitions that have been included in this bill are the ones which ought to be permanently included in the laws of the United States. I think the time has come to do it.

Mr. RAMSPECK. Under the present situation, the Labor Board set-up under Resolution 44 has no power to enforce its findings?

Secretary PERKINS. No.

Mr. RAMSPECK. Do you think it would be possible to enforce the principles involved in collective bargaining in section 7 (a) by State action?

Secretary PERKINS. You mean State action without Federal action?

Mr. RAMSPECK. Yes.

Secretary PERKINS. I think it would be extremely difficult to do that by State action only. This defines the relationship between two great groups of our population, the wage-earning group and those who employ them. The relationship ought to be a mutually useful one. In order to be mutually useful it implies the quality of

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advantage. One must not have an undue advantage if the relationship is to be useful and if the bargaining is to be just and fair. I think the method must be the same throughout the country, the same for an employer operating a mill in Virginia or a mill in Wisconsin, whether one gets out logs in Oregon or makes paper boxes in New York State. The similar principles must prevail, because we are dealing with the rights of human beings who are citizens of the country, and their rights ought not to be different in different States. Both employee and employer ought to know their obligations and rights.

Mr. RAMSPECK. Do you feel that the rights of the general public or I might say the interests of general welfare, in labor disputes transcend the private rights of both employees and employers?

I rather have an idea that the time has come when a national strike or a national labor dispute is of such proportions that the interest of the general welfare is superior to the interests of the employers or the employees, and therefore it is a function of the National Government to provide a means of settling that dispute. What do you think?

Secretary PERKINS. I am not very philosophical. I am very much more practical. I feel at this stage that it is not important how I feel about the rights of the general public as compared with the private rights of one group or another. We are dealing with a practical situation in which two great groups of our population, the wage earners and the employers, are involved. They are all employers or workers at one time, and at another time they are the general public. If the longshoremen go on strike, the paper workers in a box factory in New York think of themselves as the general public. This is a mixed situation in which a large part of the population is involved from time to time. I do not believe that the philosophical application of principles of general rights and private rights is so important as it is to establish the machinery by which the two groups can have their duties and obligations defined by Congress in their own interest and in the interest of the general public and know that the rule is going to be applied to everybody uniformly. We may over a period of a generation develop a theoretical and philosophical position with respect to this, but at present I think the paramount interest is the practical one, to have this Board set up so that there may be an orderly and uniform procedure, and the power to enforce the rulings of the Board.

Mr. WELCH. I am in absolute accord with the suggestion that when a national labor board is established it should be a part of the Department of Labor and such as has been described by the Secretary.

Mr. KELLER. I wish you would tell me where I can find it clearly set out—the fact that members of the various codes have asked for the principle of collective bargaining. That is one of the most important statements, to my mind, that you have made this morning. I understand that has been the case, and I should like to have the specific reference.

Secretary PERKINS. That the members of the code authority have asked for the recognition of that principle?

Mr. KELLER. Yes.

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Secretary PERKINS. I do not recall making that statement. The Solicitor reminds me that there is a statement in the platform of the National Manufacturers' Association.

Mr. KELLER. The general welfare bill now before the Ways and Means Committee takes in the administration of old-age pensions?

Secretary PERKINS. You mean the social security bill?

Mr. KELLER. Yes.

Secretary PERKINS. I told the Ways and Means Committee that the Social Security Board should be under the Department of Labor primarily, because it administers the Unemployment Insurance Act.

Mr. KELLER. It seems to me that the two are parallel.

Secretary PERKINS. The old-age insurance has no particular reason for being in the Department of Labor, except that there would be an economy to have it administered by the agency administering unemployment insurance. In that case the actuaries, accountants, and investigators could do both jobs, and we would get an economy of administration if they were in the same agency. I feel that it is of extreme importance that the unemployment insurance should be administered by the Department of Labor, because it is a matter dealing with workmen and their rights.

Mr. KELLER. I have accepted this, as has the chairman—that is, this should go to the Department of Labor—and if that is so, the other should go there too.

Secretary PERKINS. I am glad to hear you say that.

The CHAIRMAN. I agree thoroughly with Mr. Keller about that. We have long been trying to properly build up the Department of Labor, and labor feels that the Department of Labor is its Department, and we are its committee.

Setting up of boards which tend to weaken the Department of Labor is a bad thing for labor. I say that the social-security legislation should be executed under the Department of Labor.

Secretary PERKINS. Especially since we have such a nice new building.

The CHAIRMAN. For 15 years we have been discussing the matter of old-age pensions.

Mr. KELLER. And they took the matter away from us in the end.

The CHAIRMAN. I agree that old-age pension and unemployment matters should be under the Department of Labor.

Mr. KELLER. Yes; and I will help put it there if I can.

Is not this bill a trend toward recognition of the fact that industry is national? The thing that bumps me constantly is the fact that these remarkable States' rights, which are nothing more than States' wrongs, are always butting into all these things crosswise and creating crosscurrents. The people of this country feel that industry is national, and I will not miss an opportunity to say so. We are drifting toward it out of this experience, and I have read enough of the development of social history to know that we develop theories out of facts rather than facts out of theories.

Mr. WOOD. I want to say that I think the Secretary's statement is most valuable, the most valuable heard by this committee in connection with this important legislation.

What function would the conciliators of the Department of Labor play with reference to the activities of the Labor Relations Board?

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Would it be necessary for the Labor Relations Board to select their employees from the present Conciliation Division of the Department of Labor, or would they work independently and have the conciliators of the Department of Labor perform whatever investigational work and research work the Board may desire?

Secretary PERKINS. I think that is an extremely important question. I probably did not develop it enough. Conciliation, as I have pointed out here this morning, is quite different from the kind of judicial decision this Board would be empowered to make. This Board can enforce its decisions according to the pending bill. It can make decisions only within the framework of the law enacted by Congress. It has no independent enterprises. It acts as does a court. The Congress or the State legislature passes a law and the courts interpret it and the Supreme Court does not do more. This Board will interpret and apply only the laws passed by the Congress. It is proposed that the Congress pass this law relating to the rights of employers and employees when there is a question as to whom shall represent them in collective bargaining. That is the only authority the Board has. Many labor disputes arise over matters which are not matters of who shall represent labor in collective bargaining. Those disputes arise over what wages shall be; they arise over whether or not there shall be a noon hour of 20 minutes or 45 minutes; they arise over the hours of labor; they arise over the introduction of a new machine and the subsequent speeding-up and reduction of earnings in per-unit production. They arise over many things which this Board could not touch. Disputes arise when there is no question of labor's representative in collective bargaining.

Those difficulties even arise in closed shops. But a part of the agreement is usually, that they will negotiate until they come to an agreement. Frequently negotiations are broken off in anger when the relationships are recognized and the issue is clearly known and understood. Then the conciliation of the Department of Labor comes in. Conciliators of the Department step in and make suggestions which are frequently compromises as a result of brand-new ideas. It has nothing to do with substantive law that the Congress may have passed. My idea is that the conciliators will continue their work while the Board will confine itself to the administration and the decision of matters coming within the structure of the substantive law of the Congress. The conciliators will not in any way touch cases having to do with matters of choice of representatives for collective bargaining, with coercion, intimidation, or elections. That is purely a matter for this Board. When the Board has determined ways for collective bargaining, the bargaining can be done with the aid of conciliators and mediators or otherwise. If the Board is placed within the Department of Labor there is no doubt but what that will be the regular procedure. Otherwise, it is my fear that it will be the tendency of the Board not to make the judicial decisions that are needed at this time, but to engage in the fascinating work of bringing people together, which is a function of the conciliators that ought to be maintained. Conciliation always involves compromising and making suggestions outside of law. It is a poor idea to mix the two. It impairs the prestige of courts and confuses the law and what people are agreeing to.

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Mr. WOOD. If the Board is established in the Department of Labor, the Board would at all times have access to all the facilities of the Department of Labor and that would not only obviate duplication of efforts, which is very expensive; and, then too, the fact that the Board is in the Department of Labor would insure that it would at all times have the benefit of the experience and training of the conciliators of the Department.

Secretary PERKINS. That is true.

Mr. WOOD. And, being in the Department, the two would naturally feel closer. There would be a closer relationship between the conciliators and the Board. I feel that it would be very beneficial in the successful administration of the functions of the Board to have it launched in the Department of Labor where there are so many long-established and helpful advantages. The Board would not have to do any research work and so forth, and it could devote itself to judicial work.

Secretary PERKINS. The Board during the temporary organization under Public Resolution 44 has been in the Department of Labor, but, of course, it has had no power to enforce its own orders, which is a weakness. The relationship has worked out very well. The Board has made an admirable record and has clarified many of these issues—analyzed them—and we have been able to work together harmoniously within this structure. The conciliators have always been available for the Board, to furnish information, to investigate. and not many cases are brought improperly before the Board. Some cases should first go to the conciliators, but they come before the Board just because somebody thought of it. It is easy to say, "This case should not be before us, Mr. Jones, you take it."

Mr. WOOD. You mentioned industrial commissions in the States. I am sure it has been your experience, so far as workmen's compensation laws are concerned, that those laws have been administered with more dispatch and success and more equitably and with greater satisfaction to both employees and employers than such laws have been administered in States who have separate workmen's compensation commissions.

Secretary PERKINS. That is true. In New York State we never had comfortable, convenient, and just administration of workmen's laws until we put them together.

Mr. WOOD. Something about the selection of the employees of this proposed Board. I believe you said that the Board would be allowed to select its own employees subject to the approval of the Secretary of Labor.

Secretary PERKINS. Yes. Most of the posts would be technical and the Board should have certainly the original selection, but the approval of the Secretary of Labor would bring those appointments within the general structure of the Department of Labor as to salary ranges, qualifications as to character of the work done, and this would aid in preventing the building up of perhaps an unnecessary and somewhat fantastic activity within the Board merely because that would be interesting.

Mr. WOOD. Any employees the Board might appoint from the outside should have the approval of the Secretary of Labor?

Secretary PERKINS. I think so. It ought not to be more advantageous for a person to work for the National Labor Relations Board

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than it is to work for the Immigration Service, the Bureau of Statistics, or the Conciliation Service. The same salary range and the same line of duty should exist there that exists in other departments of the Government. It would make for harmony in the departments if that is provided.

The CHAIRMAN. Congressman Keller asked me to tell you that it was absolutely necessary for him to leave; and that he considered you batted 100 percent in your fine statement.

Mr. LESINSKI. I want to refresh your memory in connection with a letter I have here [indicating]. Has your Department made any attempt to investigate the stretch-out and speed-up systems?

Secretary PERKINS. Yes. There is a special board at work on speeding up and the stretch-out in the cotton-textile industry. Again, there is an agency of the Department at work at the present time in connection with the stretch-out and speeding-up systems in the automobile industry. You may remember the joint report made by a division of the N. R. A. and the Labor Department, which report refers to this speeding-up tendency in the automobile industry. Further studies in that connection are going on.

Mr. LESINSKI. I understand that the Henderson-Lubin report is not satisfactory to the employees. It is thought that the employers have distorted that report.

Secretary PERKINS. The report itself has not been modified since published.

Mr. LESINSKI. I do not think the investigation has gone far enough.

Secretary PERKINS. As you know, investigations and studies of the speeding-up and stretch-out systems are most difficult and complicated. It is simple enough for one to say that he is opposed to a stretching-out or a speeding-up system, but one has to define what the terms mean. One is not opposed to ordinary improvements in manufacturing processes, if they do not place an undue strain or danger upon individuals working in the industries and provided further if they do not impair earning capacity. What you mean, I suppose, by the stretch-out is a stretch-out beyond human strength and a speed-up method so organized that it cuts down the earning capacity of the individuals involved. We have to remember that the introduction of any labor-saving machine practically always creates a speed-up. It puts out more units of articles per hour and per day than could be put out otherwise. In many industries, especially the automobile industry, the introduction of that machinery has so cheapened the production that many more of the automobiles are sold and industry expands and gives more employment. There is, however, a point beyond which you cannot cheapen production to effect these benefits. This is a very intricate and technical study and it is hard to determine just where that point is. For instance, in one mill you will find that a considerable stretch-out is not only possible but simple without any undue strain upon the employees and with a real increase in earning capacity, while in another mill the stretch-out is so handled that it puts a great strain on the employees and brings them to the breaking point and greatly impairs earning capacity.

Of course, there are different conditions in different mills. There are different conditions and different floors of a factory. The floor where you see the strain may not be because of the strain at the ma-

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chines you are studying. The study of the stretch-out is one of the most complicated and technical things existing in industrial management today. We have to proceed with intelligence, with caution, and with a desire to protect workmen against the undue use of the stretch-out, and at the same time to make it possible for an industrial development to go forward at a pace sufficiently rapid to effect an expansion of the industry, so that there may be more pay and better incomes. On cannot answer "yes" or "no" many of the questions about the stretch-out. We are making this study conscientiously and trying to bring into it technical ability of the highest order. It is largely a problem of engineering, a study of the machine itself. Some machines are very uncomfortable and they create a strain of themselves. Much of that may be overcome. There is a point at which the question of the stretch-out should be considered from the purely economic point of view. At what point will the speed-up and the greater production impair the industry itself. More and more in the textile industry there is an overproduction for the existing market, due partly to the greatly increased speed and efficiency with which the goods are turned out, per man or per unit of investment in the machine. There is an economic problem connected with the stretch-out as well as the technical points of it, in addition to proving what effect it has upon the workers.

Mr. LESINSKI. I remember that in 1928 a man on a lathe used to produce 14 crankshafts per hour on 1 machine; today 1 man operates 3 machines with 17 pieces per machine and they weigh 90 pounds apiece.

Secretary PERKINS. I think that is a terrible strain.

Mr. LESINSKI. The men have to handle 5 tons of steel an hour.

Under section 7–A of the N. I. R. A. the employer has no right to coerce the employees. I have a circular letter by the Dodge Brothers Corporation dated March 27, 1935. That circular letter has an answer by a Dodge worker on the back of it. I want these to go into the record. They say [reading]:

BULLETIN

To all employees:

Attention is directed to the fact that it is a direct violation of the company's rules for employees to pass out handbills, papers, or cards of any sort for political or other purposes, or to make solicitations in the plants.

It is also against the rules of the company to post notices on bulletin boards without first securing the consent and approval of the management's special representative.

DODGE BROTHERS CORPORATION.
Division of Chrysler Corporation.

MARCH 27, 1935.

On the back of that bulletin is the following [reading]:

This notice was put up when the representative selected by the shop union put up notice of a mass meeting to be held Sunday.

The mass notices were all torn down and then this one put on all boards at time clocks.

I am not affiliated with any outside union but am sending you this to show the kind of consideration the company gives our representatives.

A DODGE WORKER.

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I do not believe a manufacturer has a right to use that sort of advertising.

Secretary PERKINS. That is exactly the kind of case that ought to be decided by the National Labor Relations Board and not by the Secretary of Labor, I would say off-hand. Of course, I have no evidence except an anonymous letter.

Mr. TRUAX. Your discussion of the speed-up and stretch-out systems raises a most interesting and vital point in the economic welfare of labor today. Does the Secretary not think that legislation such as is imposed in the 30-hour-week bill, whether it be the Black or the Connery bill, might well be called a companion bill of the one we have under consideration, the National Labor Relations Board bill?

Secretary PERKINS. I think the two are quite different and should not be regarded as having any relation. This bill deals with the rights of citizens in a particular relationship, whereas the so-called "30-hour bill" deals with the regulation of hours of labor, having in mind, first, the creation of more work for more people, and, secondly, to limit the hours of labor because of the growing need for leisure, we will say. At any rate I do not think the two things have any relation and I do not think they should be considered together.

We are making an elaborate study in the Department of the hours worked under the National Recovery Act and the effects of working certain hours upon various groups, and we shall give that information to this committee before you complete consideration of the other bill.

Mr. TRUAX. If the 30-hour-week proposal were law, would the Secretary favor having its administration and enforcement under the Department of Labor?

Secretary PERKINS. If they were, I should want the committee to be prepared to let us devise the machinery and then have the Congress to provide an adequate appropriation. I would not want it in the Department of Labor without adequate appropriations for enforcement; and it costs much money to enforce an hours-of-labor law.

Mr. TRUAX. But you would be willing to accept the enforcement and administration of such a law if funds were made available?

Secretary PERKINS. Yes. If there were appropriate machinery and appropriate power vested by the Congress.

Mr. RAMSPECK. Referring to the report on the 30-hour bill, are you taking into consideration what people who have had their hours reduced are doing with that time, whether they are taking other jobs?

Secretary PERKINS. We have no way of knowing that without an expensive inquiry in the form of personal interviews and investigations of what individuals are doing, and that did not seem appropriate. Within a year or so, I presume, some agency will make a study of a limited sample. One will find that what people do with their leisure time varies greatly in different parts of the country and in accordance with opportunities.

Mr. RAMSPECK. I am particularly interested in whether they are doing other work which would tend to throw other persons out of employment or deny them employment. That charge has been made.

Secretary PERKINS. Yes.

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Mr. WOOD. I think we could make a fair conclusion if we had an hours-of-work insurance law, as to what other jobs employees may have. There is not any machinery to show that.

Secretary PERKINS. That is right. Under an unemployment-insurance law you would have in a little while experience in all these matters and have a very real knowledge of the persons unemployed, partially employed, and the months of employment.

Mr. WOOD. There would be a method of keeping a check on the unemployed then.

Mr. DUNN of Pennsylvania. I am interested in these old men who attain mature years. It is a fact that in almost every industry in the United States and in the State and Federal Governments men and women who have attained the age of 45 are considered to be too old to work. We Members of Congress, especially this progressive Committee on Labor, would like to do something about that. Can we do anything to remedy that situation? We have an old-age pension bill, which is the administration's measure, but it is not very good to furnish pensions to men and women who have attained the age of 65 and who are paupers. What are we to do with worthy men and women who attained the age of 45 and cannot get work?

Mr. LESINSKI. If the gentleman will pardon an interruption, I will say that he is wrong. The age limit for employment in industry is 40 years.

Mr. DUNN of Pennsylvania. I am wrong, because they have reduced the age to 35 in Pittsburgh. I should like to have a suggestion from you. Can the Department of Labor do anything about it; have you any law?

Secretary PERKINS. There is no law on the subject.

Mr. DUNN of Pennsylvania. Can you suggest anything? I have asked other members of the Committee on Labor about this and they do not seem to have any remedy in mind.

Secretary PERKINS. I believe there is a possible misconception as to the degree at which people 45 years of age are put out of work. In some industries they do not keep workers after they are 45, but those industries are relatively few. What I have observed is that industries will not employ anybody for the first time if he is 45 or more. They want their new employees to be of a younger group all the time, because they want to dilute their working force with younger persons so that everybody in the plant will not get old at the same time, and the plants will not find themselves with a majority of their employees 65 years of age instead of a minority of them at that age. There is a tendency in large manufacturing establishments, to take on new workers who are in their twenties, rather than take on new ones to learn the trade in the older groups. Of course, this runs very much less in the skilled than in the unskilled and semiskilled workers. A skilled man is employed because of the irreplacibility of his skill. Old age is his greatest protection. In some industries machinery and mass production are substituted at certain points for skill. Less skilled workers operate the machines, whereas the old man used to be valuable because of his skill. For a great variety of reasons there has been a tendency in the past few years for industries to regard it as necessary to dilute their forces with a proportion of young men.

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Only a few industries lay off workers when they become 45; but if the workers get out of work at 45 they have a much harder time getting back into new jobs than do workers in the younger group. My impression is that there has been a great deal too much emphasis placed on the value of youth in ordinary work and that the stability of working forces is greatly enhanced by many men and women of middle age. The younger workers tend to give an unstable character to a whole organization, whereas the older workers give a steadiness and mature judgment, and it is a good idea to have some from both groups. There is no reason for the prejudice against the employment of those who are 45 or more. It has been suggested that some penalty be placed in the form of attacks upon a pay roll that shows an undue proportion of workers under 35, we will say, but when one comes to apply that practically to a given industry, it is not always wise. There are some industries and some organizations where youth predominates because no grown persons want the job. In other words, there are certain jobs that are particularly appropriate for young persons. Plainly, we cannot deprive young persons of the opportunity to get an appropriate start. It is a complicated situation. At the moment I cannot think of any law which could justify and adequately be passed that wolud prevent the weeding out of the older part of the personnel, or force employers to engage persons more than 45. I think, however, that it may be possible that certain adjustments in the new act concerning unemployment and old age will gradually give us a set of facts and experience, out of which there will be refinements which will encourage the keeping of those more than 45 employed. You can see how that could be done by additional contributions from persons who do not employ those 45 or more. If the burden of those more than 45 becomes very great, we shall see the result in unemployment insurance, and we shall be able to determine from whence it springs, and thereby be able to apply the requirement of excess contributions for those more than 45. We can apply that assessment where the unemployment for that age is created. Certainly it is ridiculous to devise an old-age pension system to cover persons 45 years of age. They do not want to be pensioned; they want to work, because they are in their most productive years.

Mr. DUNN of Pennsylvania. How many unemployed persons are there in the United States?

Secretary PERKINS. The estimates, as you know, are based upon the index of employment, and that is based upon information furnished to the Department of Labor by employers of about one-half of the wage earners of the United States. That is a large sample. It is a sample and not a direct count. The estimate is made from the index. The estimates may be weighed by different factors in the judgment of those making the estimates. You will find estimates varying because of the variation in judgment of those who do the weighing. There is no exact figure. Taking into consideration those who are habitually employed but who are not now employed, there are in the neighborhood of 9,000,000 unemployed. It cannot be stated exactly.

Mr. DUNN of Pennsylvania. Mr. Green told us there are about 11,000,000 unemployed and Mr. Richberg told us there was about 5,000,000.

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Secretary PERKINS. The National Industries Conference Board gave out a figure of 8,600,000 the other day. They all use the same basis, the index of the Department of Labor, which is the basic material.

Mr. TRUAX. In response to the question as to what can be done with men and women more than 45 years of age, I think we might redistribute the wealth of the country by scaling down swollen fortunes to $1,000,000 and placing a limitation upon income. Then these people could be taken care of.

Mr. DUNN of Pennsylvania. I heartily agree with the gentleman.

Mr. WOOD. Have you observed the ages of those who are among the organized groups? I think you will find in the major portion of them that men between 35 and 50 are protected, especially on the railroads, in the mines, in many mills and factories, where the employees deal with the managements collectively. The maximum age limit is not so important among those workers. Those employers who have dealt collectively with their employees have come to realize that it is not so important that they have young men and women. They realize that the older employees between 35 and 50 are in fact a greater asset to business than the younger persons. The bill before us which seeks to create a National Labor Relations Board, which would protect employees in their right to organize and bargain collectively, would enable more millions of employees to organize in their own way and thereby protect themselves with respect to wages, working conditions, and the throwing upon the scrap-heap of men and women workers who are more than 45 years of age. It will be found in the organized trades that all employees from 35 to 50 years of age who are able to produce satisfactorily remain upon the job and in employment. They do that as a result of their economic power attained through organization. This is a very important bill in connection with taking care of those between 35 and 55, which latter age is the maximum. It will go a long way toward protecting those more than 45.

Mr. DUNN of Pennsylvania. Do you think the President would sign this proposed bill?

Secretary PERKINS. I have no idea.

Mr. SCHNEIDER. If the Congress should enact an unemployment-insurance bill, is your employment service adequate to administer it?

Secretary PERKINS. No; it would have to be extended; but I do not conceive of the employment service as administering an unemployment-insurance law.

Mr. SCHNEIDER. Is it not true, however, that to properly administer an unemployment-insurance law you would have to possess very accurate figures with reference to the unemployed?

Secretary PERKINS. No; we would get accurate figures if we had the unemployment-insurance law. The unemployed would come in to register, in that it is placed upon them to prove their eligibility. They could be enumerated as they registered.

Mr. SCHNEIDER. An employment-registry service would pretty well take care of that and you would know those unemployed.

Secretary PERKINS. In the administration of unemployment insurance public-employment agencies are very important as a means of registering the unemployed and of finding jobs for them. The test of whether a man is eligible for unemployment insurance is whether

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a public free-employment agency can find a job for him. If that agency certifies there is no job available for which the applicant is fitted, that constitutes original evidence that he is unemployed and eligible for pension. The employment service would be an important adjunct, but it would not make the decisions, pay out the money, make the rulings, or set up the principles under which the unemployment system should operate. There would have to be an enlarged public-employment service.

Mr. SCHNEIDER. In order to administer the unemployment-insurance law, if the employers were to be assessed, there would have to be a very accurate system of registration.

Secretary PERKINS. There would have to be an accurate system of registration for those who apply.

Mr. SCHNEIDER. You would place a certain assessment upon the employers and the employees; how would you do that, through employment registers?

Secretary PERKINS. The amounts of assessments would be determined by the legislatures of the States. At the outset it will be a percentage of the pay rolls and the benefit itself will be a percentage of the weekly wages when men are employed. The State legislatures will select originally some arbitrary figure like 3 or 4 percent of the pay rolls. We have no long American experience in that. We shall have to rely upon European experience as to what benefits we should pay as the result of a 3-percent assessment. On the basis of 3 percent, we probably should pay something like one-half of the weekly wages from 16 to 27 weeks, depending largely upon the length of the waiting period.

Mr. MARCANTONIO. Under the present plan, as I understand, the tax is to be from 1 to 6 percent on the employers and from 1 o 3 percent on the employees. From January 1, 1936, it will be 1 percent on the employees and as the years go on that percentage increases.

Secretary PERKINS. You have confused the old-age pensions with unemployment insurance.

Mr. MARCANTONIO. I am speaking of unemployment insurance and annuities.

Secretary PERKINS. I was speaking of unemployment insurance only.

Mr. MARCANTONIO. You will agree that the range of assessment is from 1 to 6 percent on the employers and from 1 to 3 percent on the employees.

Secretary PERKINS. The employees' assessments are in connection with old-age pensions and not unemployment insurance.

Mr. SCHNEIDER. Do you feel there would be any difficulty in administering this act where employment was purely intrastate, for instance, like janitors in the city of New York demanding the right of collective bargaining and their employers contending that the Federal Government could not enforce such a law in connection with a strictly intrastate employment?

Secretary PERKINS. I do not think there would be any great amount of difficulty. If there proved to be such in practice, I presume the States would enact appropriate legislation to harmonize with the Federal Government or would delegate authority. I cannot see that this would in any way interefere with an industry strictly intrastate.

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Mr. SCHNEIDER. If the employers made the contention that the Federal Government has no right to come in because this is intrastate, and the employers went into court, they could probably make an issue of it. At the present time your conciliation service has no power to subpena employers or employees in labor disputes?

Secretary PERKINS. That is right.

Mr. SCHNEIDER. Therefore that service is more or less ineffective?

Secretary PERKINS. On the contrary, it is very effective. As a conciliation service it is very effective, but it is not a court.

Mr. SCHNEIDER. I am speaking of a case where the employer might refuse to give information.

Secretary PERKINS. Conciliation indicates that you have contacted both sides, and one cannot, obviously, conciliate if one party will not speak to him. That is, though, a rare case.

Mr. SCHNEIDER. They may speak to one and they may also give him a great deal of misinformation. In many instances employers have refused necessary and proper information and refused to go along with any betterment.

Secretary PERKINS. We have many cases, but few in which the conciliator does not make some headway.

Mr. SCHNEIDER. This National Labor Relations Board would have to maintain suboffices or a system of getting testimony and evidence in different parts of the country?

Secretary PERKINS. Yes.

Mr. SCHNEIDER. Who would set up that machinery?

Secretary PERKINS. It could be set up by the National Labor Relations Board and the Department of Labor jointly for taking testimony, making investigations, and so forth.

Mr. SCHNEIDER. I agree that your testimony is very enlightening. However, Senator Wagner was before the committee and contended that the National Labor Relations Board should be separate and apart from the Labor Department because of the possible confusion of administering it under two heads. What do you think about that?

Secretary PERKINS. I usually agree with Senator Wagner. We have talked together about this matter a great deal yet we still hold our divergent views of it. They are, of course, friendly divergents. I think there will be much greater confusion in having two agencies of government rather than having a judicial board within the Department of Labor not subject to interference or review in its judicial findings by the Secretary of Labor. The Secretary of Labor would put at the service of the board all the facilities of the Department, and these services would gradually blend and we would have an agency and an instrument of government to serve the working people in connection with all of their problems.

Mr. SCHNEIDER. In other words, many of the present officials of your Department would have to possess the power under this law to issue subpenas in the name of the Board and to administer oaths in order to get proper information?

Secretary PERKINS. Yes; they could be given that. If they are all in the one Department it could be done by an agent who has to be in that neighborhood for another purpose.

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Mr. MARCANTONIO. It is so rare that we have the pleasure of having the Secretary of Labor with us that I should like to direct a question to the Secretary, which question need not be answered. It has nothing to do with the pending bill but it is interesting to members of the committee to realize that he unemploymen plan came here and we have not had a real opportunity to discuss it. Unemployment insurance will be carried by a pay-roll tax?

Secretary PERKINS. Yes.

Mr. MARCANTONIO. Exclusively?

Secretary PERKINS. Yes. According to the Wagner-Lewis-Doughton bill, the insurance would not be carried by a pay-roll tax.

Mr. MARCANTONIO. But the annuities would be?

Secretary PERKINS. Yes; but the unemployment insurance would not be carried by a pay-roll tax. It imposes a pay-roll tax for revenue. It limits that tax if any employer is contributing to an unemployment fund under State laws.

Mr. MARCANTONIO. Suppose some States do not have unemployment funds? The fact remains that the unemployment-insurance revenue will be raised by a pay-roll tax.

Secretary PERKINS. The pay-roll tax which is assessed according to the Wagner-Lewis-Doughton bill cannot be used to pay unemployment benefits.

Mr. MARCANTONIO. The revenue for that is raised through a pay-roll tax?

Secretary PERKINS. Yes; in the States.

Mr. MARCANTONIO. Like the sales tax, it falls upon the consumer. What is there to prevent the shifting of this tax to the employee by means of wage reductions?

Secretary PERKINS. The right of collective bargaining, which I hope will be established by this bill.

Mr. MARCANTONIO. The collective bargaining is established so far as the statute books are concerned, but it can be enforced only by the workers, depending upon the economic situation. If unemployment remains at its present status, you appreciate that it is impossible for employees to insist upon their present scale of wages? Wages are bound to come down, and if the pay-roll tax is shifted to the workers by cutting wages the result will be that the poor of this Nation will carry the burden of unemployment insurance. I predict that the die-hard reactionaries will gladly vote for this bill when it comes up for consideration in the House.

Mr. WOOD. Do you know any group of employees that has taken a decrease?

Mr. MARCANTONIO. Not to any great extent. I think we have reached the point where industry will cut wages. That will happen within the next 2 years.

The CHAIRMAN. The day we passed the Economy Act the United States Steel Corporation made a 15-percent cut in wages. I predicted that 2 weeks before it was done.

Mr. DUNN of Pennsylvania. The railroads are to receive an increase in freight rates. The railroad employees are getting back the last 5 percent of the wage reduction, and the railroads are going to increase rates and thereby make you and me pay more for beans and onions.

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Mr. WOOD. The railroad workers reclaimed 10 percent of their reduction, and this 5-percent increase in freight rates is not commensurate with the amount necessary to pay the increase given the railroad employees. They did not raise freight rates when the railroad men got back their 10 percent. In short, the Interstate Commerce Commission has not allowed enough increase in freight rates to cover the increase in wages.

Mr. MARCANTONIO. I want to say to Mr. Wood that one of the main reasons I believe wages are going to come down is because we are going to throw a good portion of the $4,000,000,000 relief money into the labor market to employ men at $50 a month, and wage scales will come down to that level. I think you agree with me.

Mr. WOOD. But that has not anything to do with unemployment-insurance pay-roll tax.

Mr. MARCANTONIO. It has a great deal to do with shoving the burden of the pay-roll tax to the employees.

The CHAIRMAN. It has been testified here that you went to some town in Pennsylvania, I think it was, and you were not allowed to speak there. You had to go to the post office to speak. Is that true?

Secretary PERKINS. No.

The CHAIRMAN. That was testified to by somebody in connection with old-age-pension legislation here. It was said that you went to Pennsylvania and were not allowed to speak.

Secretary PERKINS. Since this has been mentioned, I shall be glad to tell you exactly what happened. I spent a day in a town in Pennsylvania where I spoke twice to two different groups. As I left the city hall where I visited the mayor, or as he is called there the burgess, I found a group of working people who said they were citizens of that place and had been excluded, that they had not had an opportunity to hear me. I was not doing the talking; they wanted to talk to me. I had been talking in the burgess' office with workmen and these other persons said they wanted to see me but were excluded. I told them I should be glad to hear them. It was then that the burgess would not allow them to come to the city hall. They wanted to tell me something and I suggested that we go over and sit in the park, but the burgess would not allow those men to go into the public park, which is the property of the town. I saw the post office across the street and, recognizing that we must talk somewhere, I suggested that we go into the post office. We did so and they told me what they had in mind for about 20 minutes.

The CHAIRMAN. Referring to this provision containing the penalty clause, which provision you would strike out, suppose we had an example of Harlan County, Ky., where they drove out certain persons; suppose we had an instance like they had at Elizabethtown, Tenn., where they drove out Mr. McGrady, or an instance like they had in Imperial Valley when they drove out Mr. Roarty when he went there to write a newspaper article? Suppose some representative of this proposed board went to a county to learn what was going on and they drove him out? Should there not be a penalty in connection with such conduct?

Secretary PERKINS. The officers of the Federal Government are protected by other laws and statutes and I do not think this particu-

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lar protection is necessary. They have the protection as we understand.

The CHAIRMAN. Suppose a representative of this board walked into some place in Georgia or Massachusetts and he was taken for a ride, could you do anything about it?

Mr. WYZANSKI. It might be a conspiracy.

The CHAIRMAN. What if only one man did it?

Mr. WYZANSKI. That would not be a conspiracy.

The CHAIRMAN. We do not want the McGradys or anybody else run out of any place.

Secretary PERKINS. I think it is unlikely that an officer will have such trouble.

The CHAIRMAN. It seems like the burgess in Pennsylvania was discourteous to you.

Secretary PERKINS. No; he did nothing that was not within his rights.

The CHAIRMAN. But the Secretary of Labor is quite an important personage.

Secretary PERKINS. He can have whoever he wants to come into his own office.

The CHAIRMAN. On page 10, line 1, it provides—

> That any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing.

That looks to me as if the employer could build up another company union.

Secretary PERKINS. I have proposed an amendment that would make that language read—

> That nothing in this section shall deprive any individual employee or group of employees of the right at any time to present grievances to their employer.

The CHAIRMAN. Do you think that your proposed amendment would take care of that?

Secretary PERKINS. Yes; that is our judgment.

The CHAIRMAN. In other words, your understanding is that if a majority of the plant employees decide to form a union and they were the ones to do the collective bargaining—suppose there was a minority of 40 percent and they went to the employer and presented their grievance, the collective-bargaining proposition would still have to be taken care of by the majority?

Secretary PERKINS. That is my understanding.

The CHAIRMAN. The language as it reads would leave an opportunity for the employer, as Senator Wagner and Mr. Green told us, to give all favors to the 40 percent. If the employer granted an increase in wages he could give it to the 40 percent and break up the legitimate union.

Mr. SCHNEIDER. How would that work out? Let us say that there are two, three, or four craft unions in a big printing plant. Who would represent the employees?

Secretary PERKINS. This bill provides that the National Labor Relations Board shall determine the unit for collective bargaining. If there are three or four existing unions, as in the printing industry and other industries, then the Labor Relations Board will return

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how many units will bargain collectively. There are other industries into which there are not divisions into crafts. The Board then might indicate that the whole plant was a unit. You cannot legislate in connection with that because there is variation. It seems necessary to leave it to somebody to determine.

The CHAIRMAN. There is a probability at least that the McSwain bill to take the profits out of war will be called up very soon, and it is a very dangerous bill for labor, according to Mr. Green's statement of yesterday. Therefore let us adjourn until tomorrow morning at 10 o'clock.

We want to thank you again for your very splendid and informative statement.

(Thereupon, at 12:30 p. m., Wednesday, Apr. 3, 1935, the committee adjourned, to meet at 10 a. m., Thursday, Apr. 4, 1935.)

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LABOR DISPUTES ACT

THURSDAY, APRIL 4, 1935

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

Hearings on H. R. 6288 were resumed at 10:30 a. m., Hon. William P. Connery (chairman) presiding.

The CHAIRMAN. The committee will come to order. Our witness this morning will be Dr. E. R. Lederer, chairman of the labor subcommittee of the Planning and Coordination Committee for the Petroleum Industry. Is Dr. Lederer here?

Dr. LEDERER. Yes, Mr. Chairman.

The CHAIRMAN. You may go ahead, Dr. Lederer, in your own way.

STATEMENT OF DR. E. R. LEDERER, CHAIRMAN LABOR SUBCOMMITTEE OF THE PLANNING AND COORDINATION COMMITTEE FOR THE PETROLEUM INDUSTRY

Dr. LEDERER. Mr. Chairman and gentlemen of the Labor Committee, I have been delegated by the Planning and Coordination Committee to present to you the attitude of the petroleum industry toward H. R. 6288, National Labor Relations Act.

We have heard and read some very important and impressive legal arguments during the hearings before the Senate Committee on Education and Labor against the companion bill, S. 1958, the Wagner disputes bill. I am qualified through my training and 31 years of practical experience in all branches of the petroleum industry, a large portion of which was either in or in closest contact with the army of employees in our industry, to look at this bill only from the practical point of view and visualize its consequences upon our own industry, should it become the law in its present form.

In order to explain our position, I must present a brief and very condensed picture of our industry and its operations. The President recognized that the petroleum industry is unique and different in its many ramifications and placed it under a separate administration. We have our own Oil Administrator, the Secretary of the Interior, who delegates most of the details of supervision to the Petroleum Administrative Board. Our labor relations are regulated by the Petroleum Labor Policy Board. The Planning and Coordination Committee represents the industry. This is a body of 21 men, partly executives of corporations, large, medium, and small, integrated and nonintegrated, and partly independent producers and marketers. This committee presents a true cross section of the industry, which

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covers the production of crude oil, transportation, refining, and marketing. We estimate that there are over 30,000 individual units employing 1,200,000 persons, receiving a total monthly pay roll of about $130,800,000. The size of these units varies from the small producer on one lease to large companies owning thousands of wells all over the producing fields of the country. In the refining branch we find plants ranging from 50 barrels a day, operating one small still, up to the most modern, up-to-date, efficient refineries with 150,000 barrels a day crude capacity, representing investments of many millions of dollars. The marketing branch comprises the small filling-station operator, medium-sized distributor, generally covering just 1 or 2 States, in wholesale or retail operations, or both, and the large distributors operating in many or all of the 48 States of the Union. Only 22 corporations can be considered as the real major integrated companies, and even their operations are decentralized and adapted in working and operating conditions to the particular locality in which they are situated.

Our industry like all other industries, although unaccustomed to regimentation before the advent of the code, managed to adapt itself quickly to the new trend, and has cooperated in most cases whole heartedly with the Administrator. We have reabsorbed, during the year of May 1933 to May 1934, 217,200 persons, an increase in employment of 39.5 percent, and taking May 1929 as 100 percent, our employment has increased 107.7 percent. The pay roll is practically equal to the 1929 pay roll, and in "real wages", it is 107.2 percent. In 1930 the percentage of labor costs of total refinery operations, for instance, was 17.24 percent. In the first 3 months of 1933, it was 27 percent, and in the first 3 months of 1934, 32 percent. The average working week of all our employees in the different branches is approximately 39 hours, ranging from 36 hours in the operating branches to 48 hours in filling stations. Our minimum wages are almost at the top of all code wages, and wages for skilled men are based on a percentage average of about 80 percent of 1929, or peak, weekly earnings.

Considering the wide difference between the set-up of our industry and that of most other industries, we doubt very seriously if our industry can or should be standardized and consolidated with all other industries in its labor relations as this bill intends. Labor relations in our industry, before enactment of the code, had been mostly harmonious, based on mutual understanding. Strikes of considerable size had been unknown, and only since the inception of the code have we experienced sporadic strikes in the industry. Labor turnover in our industry is very small with the exception of a few migratory crafts, such as drillers, rig builders, and, naturally, part of unskilled labor, which is employed whenever the necessity arises. The skilled employees are highly trained, of an intelligent type, earn comparatively high wages, are settled, and prefer to stay with their employers. Ours is the only industry which even during the depression has maintained the sales level, and has shown a small increase in sales volume during the last 2 years. We have also always maintained more regular operations than any other industry without seasonal disruptions in employment. It is wrong to judge the entire industry by the operations of the few outstanding large units.

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According to Standard Statistics, 18 major companies showed in their combined operations a deficit of 2.25 percent in 1931; profits, ranging from 0.36 percent in 1932 to 0.78 percent in 1933, and 1.13 percent for the first 6 months in 1934, based on an investment of approximately $5,000,000,000.

A large majority of the companies and individual operators within our industry, employing about 600,000 persons, present an entirely different picture. A recent survey made of the smaller independent refiners shows that their losses in 1934 amounted to from 140 to 180 million dollars. The continual increase in operating expenses which ranges anywhere from 20 to 40 percent, in the face of very low values of the finished products produced from crude, has forced many of the smaller units out of business, while others survived only by taking the employees into their confidence and arranging with them, through collective bargaining, hours and wages not exactly in conformity with the code. Complaints about such arrangements came mostly from outside sources, and in most cases, could be settled under section 4–a of article 1 of the Petroleum Code, providing for such exceptional cases, through the good offices of the Petroleum Labor Policy Board and the Planning and Coordination Committee. We have never had "sweatshop" conditions in our industry, and complaints over "stretch out" or "free wheeling" which are interjected frequently by outsiders, have been explained by respondents in most cases as being due either to extreme economic pressure, changes in operating conditions, or technical progress, which will never cease and very often means the end of an old, established handicraft.

The majority of the industry has not shown serious resistance to section 7, article II of our code, which is identical with section 7 (a) of the National Industrial Recovery Act. From my experience on the labor subcommittee since the organization of this committee, and particularly since I have been devoting my entire time to this most important problem, I know that violations have been mostly based on misinterpretation, or the wrong attitude by either labor or local management, and our files show only one single case of absolute refusal to bargain collectively. In fact, collective bargaining in our industry is an old-established institution. In most of the major companies, the employees have formed councils, or representations, or plant committees, which are now called "company unions." These employees receive 1 or 2 weeks vacation at full pay, according to length of service; most companies, even the smaller ones, have group insurance and other benefits for their men. The industry has maintained national and local safety organizations at a great expense, and is most anxious to maintain healthy and safe working conditions. Large and small producers have always maintained houses on leases, mostly surrounded by small truck or flower gardens. In the larger oil fields, we have well-equipped camps; near refineries located at any distance from a town, colonies are established, where the employees live in comparative comfort, at low rent and very nominal charges for utilities.

Under these conditions, the International Association of Oil Field, Gas Well, and Refinery Workers of America have not been able to recruit many members from our industry. Before the advent of the

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code, their number was negligible, and even at present the records of the hearing before the Cole committee show that this association numbered only 81,000 members, which is only from 6 to 7 percent of all persons employed in the industry; and adding to that a number of filling station operators, belonging to local service station attendants' unions in larger cities, and a number of mechanical employees, belonging to craft unions, 8 percent would be a very generous figure. It is practically impossible for them to approach employees in old-established, settled producing territories, and their membership is restricted to the few locations where the manufacturing branch or large field operations are concentrated.

I will not burden you with any emotionalism in my presentation; I am endeavoring to look the facts squarely in the face. I wish to state right here that we are not opposed in principle to the right kind of labor legislation or to the right kind of labor organizations. Based on the experience we have had with our code, which had to be interpreted many times and new orders released to complement it, we must insist that such legislation, in order to be helpful, should be precise and certain, and not abound in uncertainties. A careful and conscientious study of a law should enable employer as well as employees clearly to understand and to comprehend it. It should not furnish fertile grounds for willful or arbitrary interpretation, evasion, and possibly hostile attacks.

We have suffered enough during the 18 months of our code from such indefiniteness and vagueness, and had to employ an array of legal talent and keep it busy studying complaining and interpreting to us the meanings of many of the stipulations of the code, at great expense and loss of time to the industry. If we get reasonable laws, which permit us to conduct our business peacefully and constructively, we will submit to these laws and carry out their intent, in the law-abiding and patriotic manner for which our industry is known. There is no doubt in our minds that this bill in its present wording, lacking clear definition for such terms as "wage earners", "questions affecting commerce", "interference", "coercion", and so forth, will only create strife and dissension, and lead to endless court proceedings which only the Supreme Court of the United States will be able to solve; and meanwhile, unrest and distrust will prevent employer and employee from cooperating in the performance of productive work, which we certainly should bear in mind if we wish to recover.

The CHAIRMAN. May I suggest to you that you could save yourself some time by filing the balance of your prepared statement, as all of this will go into the record and be read over by the members of this committee. The committee always wants to ask questions of witnesses. If you want to continue with your statement, you may, or it will go into the record. Which would you rather do?

Dr. LEDERER. I am perfectly ready right now for the questions that you gentlemen wish to ask me, or I can continue and finish my statement.

The CHAIRMAN. Then, you can continue reading the rest of your statement into the record.

Dr. LEDERER. Possibly some of the questions are anticipated in my statement.

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The CHAIRMAN. Finish your entire statement if you want to, because when we get started asking questions we won't stop, and you won't have a chance to finish your statement.

Dr. LEDERER. I believe if you will permit me to continue it will present to the committee the picture of our attitude, and it affords possibly some suggestions. It will not take very long. There is no doubt that labor and industry feel that this bill makes our Government the protector of labor alone, favors and promotes unionization, and constitutes class legislation, although we were assured by the National Recovery Administrator that "this administration is not to be used for unionizing in industry", release number 5 of June 30, 1933.

It will prohibit the natural direct contact between management and employees and destroy the old-established fine spirit of loyalty to the company and its products, which attitude we always considered one of the greatest assets an employer could create and possess. I am not at all convinced that this bill will bridge this deep gap, artificially and unnecessarily created.

It is only natural that existing labor organizations will take the fullest possible advantage of this bill and force into the unions all our employees who do not belong to them at present. The employer is prevented from stopping the growth of this monopoly in his own industry, but when it arrives unhampered at the necessary limit, to be considered a "majority", that is 51 percent, it can declare a closed shop and cause the discharge of those not affiliated.

It is most unfair and unjust that the authors of this bill—as well as those of section 7 (a) of the Recovery Act—feel that the Government has to protect only the employee from intimidation, discrimination, and coercion, by his employer, thus impairing the integrity and honesty of all employers. How about all the coercion and intimidation which has been applied during all these years much more frequently, and often very forcefully, by employees who have been harangued by irresponsible orators, often not even belonging to the industry, and who have caused considerable damage to life, safety, and property? Not that it is the intent of the law, nor of the officials of such unions to create such enmity and savagery, but they cannot control ambitious and misled members far away from headquarters.

Subdivision 3 of section A of the bill states that it is illegal for an employer to discriminate in hiring men, but goes on to stipulate that a "closed-shop contract is not discrimination." This is very inconsistent and certainly can be interpreted as governmental sanction for the controversial "closed shop" contract. The National Recovery Administrator, however, in release 463, clearly stated that the N. R. A. will not undertake in any instance to decide that a contract should be made. True, the bill does not state in so many words that it forces the employer to sign a closed-shop agreement but it does not preclude an employer from making an agreement with a labor organization and require membership thereunder, as a condition of employment, if such labor organization is the representative of the "majority" of the employees. The majority rule propounded in section 9 (a) seems to ask coercion of the cruelest kind: The labor unions certainly will use every effort to force a

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minority, unwilling to pay the dues and submit to the bylaws of their organizations, either to join in order to be permitted to earn a living, or to be deprived of a job. What constitutes this "majority", and how will such "majority" be obtained in a decentralized industry such as ours? I do not think you can force all of our employees to vote at an election; in fact, I know that it is physically impossible. This bill exposes them to all the chicaneries and various methods of forceful persuasion to make them vote. In order to have a real honest "majority", it certainly is necessary that a majority of all the employees vote. How will it be possible to determine finally who is authorized to speak for the employees, and how will the employers know with whom to bargain collectively? According to sections 9, B and C, the board, in any question affecting commerce, will finally decide as to the proper unit of collective bargaining, and certify the parties who have been designated or selected. It can do so either after a hearing or utilize any other suitable method to ascertain such representatives. With this very indefinite and easily misunderstandable language, all the benefits this very important feature could render, become ineffective.

We would much prefer to have all elections held under Federal control and a precise law, protecting peaceful workers from intimidation and improper influence by employers as well as fellow employees, under the influence and instigation of outsiders or professional organizers.

If the Board established under this bill is in the least unfriendly, it can rule in such a manner that all employees would be conferring during the full working hours and during many consecutive days with the management, without arriving at a settlement; this situation would, in fact, constitute a strike financed by the company. This refers to section 8 (2).

It would work a hardship on the industry, and an injustice to any minority group of employees, or to individuals.

The CHAIRMAN. Will you repeat that again, Dr. Lederer, just go back to that reference to section 8.

Dr. LEDERER. If the board established under this bill is in the least unfriendly, it can rule in such a manner that all employees would be conferring during the full working hours and during many consecutive days with the management, without arriving at a settlement; this situation would, in fact, constitute a strike financed by the company. That is, if all of the employees under this wish to bargain collectively, or to confer with the management during working hours at full pay, no work would be done. Of course, that is an extreme case, but it could be so interpreted under this provision. The minority, of course, can or may present grievances, but they cannot elect representatives or make agreements.

Likewise, an unfriendly board could cause, under subdivisions (b) and (c) of section 9, independent unions or nondominated company unions to lose an election by applyig vertical or horizontal methods of election, or any other suitable method the board chooses.

Any trivial dispute could be made the subject of long, drawn-out, costly litigation, depriving employer of time and thought to do con-

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structive work and build up his business, which is most necessary in order to keep employees on the pay roll. An unfriendly board, or its agent or agencies, could make it impossible for an employer to furnish the necessary records or to be present to defend himself on a 3 days' notice, or possibly with an additional grace of a few days more. This is referring here to section 10.

All established practices and precedents have been fully discarded by vesting the National Labor Relations Board, or local boards and agencies which it may create, with legal authority and power of enforcement superior to that of any existing labor board or agency. It has authority to amend and rescind its own rules and regulations, which become law and enforceable upon publication. That is section 6 (a).

Under section 16 the power of the board is not affected by any other means of adjustment made by agreement, code, law, or otherwise.

The decisions of the Board are not controlled by legal evidence only; such evidence as the Board may develop can be based on rumors, hearsay, exaggeration, and so forth. That is section 10 (c).

The courts will have to accept such evidence developed by the Board or its agencies, and therefore cannot consider questions of law. That is section 10 (f).

We consider it very arbitrary that such a board, or its agencies which are authorized to render decisions in the name of the board on the findings presented, should be empowered to amend complaints at any time, assess damages, and award restitutions without regular court proceedings provided by constitutional law. That is section 10 (d).

This bill can be so interpreted that nothing can prevent strikes. It will not be necessary for employees to give notice or consent to attempt an amicable settlement or exhaust every possible effort to effect a settlement before striking. This has reference to sections 12 (c) and 15.

It seems that industry is bound, but labor is explicitly released from being amenable to the proposed law—section 12 (c).

Section 13 makes the board a tribunal of "inquisition" rather than of "law", permitting unnecessary meddling, not only in corporate affairs but also with the private business of the employer. It could cause the flouting of trade secrets. Its investigative power, through agents or agencies, exceeds the corporate limits and delves into the private affairs of the individual, partnership, or corporation. The right of the board, or its authorized agent or agencies, to examine and copy any evidence of any person investigated, would result in making public knowledge of all details of the employer's business, which unscrupulous competitors might be very anxious to know. In fact, this section might place all industries in the status of public utilities.

We cannot conceive why the industry should be placed entirely at the mercy of any labor group which might find means to take undue advantage of the bill. This is in section 15.

Even our courts are called upon to institute, solely at the request of the board, proceedings to prevent and restrain unfair labor prac-

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tices affecting commerce—section 11. Not even the Federal Trade Commission has any power comparable with that of this board.

I wish to quote here a statement by Samuel Gompers, the great labor leader, made on August 20, 1922:

> Whenever governmental industrial courts or tribunals are set up, the principle of litigation is substituted for the principle and practice of negotiations, conciliations, and joint agreements, which obtain wherever voluntary relations exist between workers and employers. A spirit of enmity and suspicion is substituted at once for the spirit of cooperation, conciliation, and mutual agreement. * * * This principle is wrong and the practice is disastrous.

In the name of justice, we could and should be entitled to expect that such important legislation place authority and responsibility equally on both sides. Our existing laws, I am advised, have not much power to reach labor organizations in case they should abuse their economic strength which this bill intends to give them. The American Federation of Labor and its affiliated labor organizations are voluntary, unincorporated associations. They are accorded certain privileges and exemptions in various acts of Congress. They are not suable for conspiracy under the Sherman Act, and no officer or member, and no association or organization interested or participating in labor disputes, shall be responsible or liable in court—the Norris-LaGuardia Anti-Injunction Act, March 23, 1932.

Under the common law, no suit at law could be brought against such an unincorporated association unless all the members of it were made parties defendant. Certain States have statutes that provide that such association may be sued by name or certain of its officers may be sued as representing the association. However, not all labor organizations have sufficient funds, so that even a successful suit could not reimburse industry for the damages done by violence. We have no law to prevent frivolous, unjust strikes, and I personally have heard it frequently stated by officers of International Unions that sometimes important decisions in controversies must be left to the local unions and that the members of these locals are beyond the control of the international officers. Therefore, the employer is the only responsible party.

May I draw your attention to similar legislation in Australia, which has a system of compulsory regulation of labor disputes? The chief objects of the act were to prevent lookouts and strikes, and to constitute a court of conciliation and arbitration in order to facilitate and encourage organizations of representative bodies of employers and employees, and to provide for the making and enforcing of industrial agreements. Justice Higgins commented on the complicated system of these boards of conciliation and arbitration, and mentioned, among other things, that the word "dispute" had been stretched to include cases where the mere exchange of correspondence between employers and a union has been held to constitute a "dispute." He finally succeeded in securing industrial dispute courts to replace these boards.

The British Economic Mission, in its report of January 7, 1929, indicted the whole system, particularly on the grounds that it had tended to consolidate employers and employees into two opposing camps, and had lessened the inducement to either side to resort to a round table conference for the frank and confidential discussion of differences in the light of mutual understanding and sympathy,

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which is the best means of arriving at fair and workable industrial agreements.

Judge Brown, one of the judges of the Industrial Courts, stated: "Most industries in South Australia, as in other States, are domestic industries which call for and should receive domestic supervision", and recommended a more democratic tribunal through local supervision rather than a centralized national tribunal.

Mr. Charlton, a labor leader in the Commonwealth House of Representatives, on June 28, 1928, indicted the centralized arbitration court for the delay in handing down decisions.

The Wagner and Connery bills seem to me very similar to this condemned Australian compulsory system. I would much prefer to follow Mr. Harriman's suggestion to set up special local or State labor disputes courts, which would act as mediators and conciliators under a definite, precise labor law.

In 1906 Great Britain relieved the registered trade unions of liability for acts of their agents in furtherance of trade disputes. After the general strike in 1926–27 the Parliament was forced by a social uprising to create the British Trade Disputes and Trades Unions Act, and even after the British Labor Party came into power, pledged to repeal this legislation, it was never disturbed. The act legalizes strikes and lock outs, but confines it to the industry in which the dispute arises, and forbids sympathetic strikes; it forbids strikes intended to coerce the Government by inflicting injuries to the public. It clearly defines the right of workers who wish to continue their jobs during a strike. It requests accounting of contributions made by workers and reports to the Government. Governmental agencies are empowered, with the consent of management and labor, to undertake settlement of labor difficulties. No labor board was created. Picketing is illegal, if it is likely to intimidate workers or cause disturbance. The attorney general, or any person interested in relief sought, may obtain an injunction restraining the application of trade-unions funds in support of an illegal strike.

Should we not learn from the experience of these two big commonwealths and write a law without these many pitfalls?

We have no opposition to collective bargaining, but we resent bargaining with outsiders and not our own employees, who certainly have a better understanding of their company's operation. We resent that our industrial peace and relations should be disturbed and dissatisfaction spread and artificially created by outsiders traveling from one refinery or oil field, or distributing center, to another. Their business is to find trouble and cause often unreasonable requests for higher wages and changes in working conditions, which most of us cannot afford to meet until we show profits for our stockholders, whose trustees the managements are. We have just as much social conscience, understanding, and sentiment for our employees as the men who consider themselves the guardians of our employees. It takes time to develop the proper understanding. The wide difference in opinion, the contrast between the old established views and the new ideas cannot be overcome in a year or two, unless brought about through a social shock; in other words, a revolution such as we have seen in other countries and which we all want to prevent by all means.

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I would hate to see a bill like this become law without considerable changes. I know it will have serious consequences and disturb our industry, the third largest in the country and one of national importance and interest. The recovery in our business is still on a weak foundation and needs plenty of careful nursing. You give it a serious jolt like this bill will with all its far-reaching ramifications and uncertainties, creating distrust and fear, and it will not only stop recovery instantly, but I am afraid will precipitate collapse.

The CHAIRMAN. Mr. Lederer, you say you are chairman of the labor committee of the planning and coordination committee for the petroleum industry?

Dr. LEDERER. Yes, sir.

The CHAIRMAN. Does that include everybody—the Shell Oil Co., the Standard Oil Co., and all of these companies?

Dr. LEDERER. The President set up, under his order of August 19, 1933, as the self-governing administrative body of the industry, a planning and coordination committee, which consists of 21 men.

The CHAIRMAN. In your last remarks you made reference to a law for bidding picketing and all of that. Where did you say that was set out?

Dr. LEDERER. It is in the English law.

The CHAIRMAN. In the English law now?

Dr. LEDERER. Yes.

The CHAIRMAN. Under the code the filling-station workers work 48 hours a week.

Dr. LEDERER. In our code they work 48 hours a week.

The CHAIRMAN. I have talked with a great many of them at filling stations throughout the country, as I traveled around in my automobile, and invariably I have been told that before the codes they worked about 40 hours a week, and they got a certain rate of pay, perhaps $18 a week. Now, under the code they are working 48 hours a week, and they get $15 a week. In other words, the codes meant to them that these organizations made the minimum wage the maximum wage as well, and instead of raising their rates of pay and shortening their hours, they lengthened their hours and lessened their wages.

Dr. LEDERER. We have statistics to show that these statements are not perfectly true. I am a member of the industry and I was vice-president of the Pacific Coal & Oil Co. at Fort Worth, Tex., which is one of the smaller, absolutely integrated, independent companies. I was chairman of several subcommittees under the code, and I know that the working hours in filling stations have been reduced. They used to work 56 hours a week as an average. Now, you have to realize that the companies can control only the working hours of the employees in their own filling stations. They cannot control them in the filling stations that they lease out under an agreement, a lease-agency agreement, or contract to an outsider, who can conduct his operations independently, and regulate the hours of his employees.

The CHAIRMAN. Who controls this big station down here, just off of Pennsylvania Avenue?

Dr. LEDERER. The Standard Oil Co.

The CHAIRMAN. Dedicated to John D. Rockefeller, the big one down here?

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Dr. LEDERER. That is correct, operated by the Standard Oil Co. of New Jersey.

The CHAIRMAN. Those men were working 40 hours a week before the code, and they are now working 48 hours a week and getting less wages for the 48 hours than they got for the 40 hours. So, they are controlled directly by the company.

Dr. LEDERER. The company itself is responsible for that.

The CHAIRMAN. Yes. I can give you the names of them, but I do not want the men to be fired from their jobs.

Dr. LEDERER. No; I do not think that is so dangerous, Mr. Chairman. I would like to elucidate that to you. I have been on the labor committee for Texas since its inception. I have been up here in Washington since January 28, devoting my entire time to it, and these fears of employers discharging their men because they complain about conditions are greatly exaggerated.

The CHAIRMAN. As to your own industry, we have not had much testimony on that before this committee, but we have had ample testimony here as to other industries. In the automobile industry they fire them right and left, and not only that, but they take their pictures. If they attend any outdoor gathering of labor organizations, they will take their pictures so they will have them and know who to fire. If a man is interested in a labor committee they are going to fire him.

Dr. LEDERER. I am only talking about our own industry. I tried to impress on you gentlemen that our industry is decentralized, and that there is no mass operation except in places like Bayonne, N. J., in that territory, and Marcus Hook, near Philadelphia, Port Arthur, and Beaumont, and possibly Tulsa, Okla., and the Los Angeles base.

The CHAIRMAN. The Standard Oil Co. can keep their finger on every filling station in the United States that sells gas and oil and say to them, "We will take care of you if you do what we tell you, and if you do not we won't let you sell our gas and oil." They can control the situation.

You referred to section 8 in your remarks. The portion to which you referred to reads:

> *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours, without loss of time or pay.

You said that the Board would be practically helping the strike by saying that the company would be financing their employees, and practically financing the strike.

Dr. LEDERER. I say an unfriendly Board could.

The CHAIRMAN. Well, even an unfriendly Board. It says the employer shall not be prohibited from permitting employees to confer with him during working hours. It does not say he will have to confer with the men. It says he will not be forbidden to confer with the men during working hours without loss of time or pay.

Dr. LEDERER. Yes; he has to bargain collectively, they say, whenever a committee representing the majority of the workers wishes to bargain.

The CHAIRMAN. It does not say that in the bill, and the law would provide a reasonable time, just like everything else. The courts

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always look to what is reasonable in the employer. If the employer should consistently state he would not give the men half an hour during company time to talk over collective bargaining, I would say that was unreasonable. However, I would not expect an employer to go through 3 days from 7 o'clock in the morning until 5 o'clock in the afternoon just discussing collective bargaining with the men.

Dr. LEDERER. I have personally attended conferences which have lasted for hours and hours at a time.

The CHAIRMAN. If the employer refuses to sit down and put in 8 hours a day conferring on this matter, there is nothing in this law that would hurt him.

Dr. LEDERER. Is it your intention, as the author of the bill, Mr. Chairman, to say that the employer can refuse to meet with this committee representing employees?

The CHAIRMAN. No.

Dr. LEDERER. That is what I mean.

The CHAIRMAN. Neither do we expect that they are going to finance a strike. In fact, we are not talking about strikes at all in here. We are trying to prevent strikes by collective bargaining ahead of time, and this committee believes from the testimony that we have had here in the last 3 or 4 years that if you had had something like this 2 or 3 years ago, that you would not have any trouble in any of your industries, because the big fight has been for the right to bargain collectively.

Dr. LEDERER. Mr. Chairman, I believe I have stated clearly that we are not opposed to labor legislation, but from our experience we have to insist that the law be precise and clear. Your intent is perfectly sincere to protect labor and probably also give industry a chance, because without industry labor would not make a living.

The CHAIRMAN. That is right.

Mr. EAGLE. And without labor industry would not exist, would it?

Dr. LEDERER. Yes; I fully agree with you.

Mr. EAGLE. You fully agree, but you do not say it.

Dr. LEDERER. I fully agree with you that without labor industry could not exist, and without industry labor could not exist. It is a 50–50 proposition. I go further than that, and I am perfectly glad to admit that the money proposition alone does not count. Labor invests just as much as capital. I am one of them, and all I have is my brain and my working capacity. I want just as much protection as the capitalist who puts his money in. Without trying to find trouble, I am just trying to draw your attention to certain points that we consider are vague and uncertain, which might in the future create the wrong impression and cause strikes and disputes.

The CHAIRMAN. Dr. Lederer, I believe personally that the big corporations, like the Standard Oil Co., the Shell Oil Co., and these big textile industries, and the automobile industry, are very short-sighted. Now, I say this with all sincerity. I have seen them in instances go out and break a strike. It would cost them possibly $2,000,000 to break that strike, and yet, in the first place, it would have cost them half of that sum to meet the requests of labor. For instance, in the telephone strike, when these operators went out on strike a few years ago it must have cost the American Telephone & Telegraph Co. at

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least $2,000,000 to defeat those strikers, and yet if they had paid those girls what they asked for in the first place, and to which they are entitled, just a decent wage, they would have saved at least half of that money and they would not have had the turmoil and strife and the troubles in homes and the service disrupted during all that time. Now, I think you are facing the same situation here, and I wonder if the big employers cannot see that situation like those in Congress and the Committee on Education and Labor of the Senate. Senator Wagner and myself know how they regard us.

They regard us as enemies of the employers, as actually being inimical to the employers, when we are not. What we are trying to do, Dr. Lederer, it to save those corporations from communism and from bloodshed, and, Dr. Lederer, the Government wants them to give labor of the United States a fair deal. The American Federation of Labor, to which you referred, is the bulwark that is holding back communism in the United States among the workers, by having them in organized units where they can be self-respecting American citizens and have a chance to bargain collectively for their rights. They are keeping men in line who, if they did not have that union, would say, "All right, we get no protection from the Government; we are slaves to our employers. Let us go out like they did in Russia and let us turn the Government upside down and take the money away from these fellows."

I am surprised that the big employers cannot see that, and do not regard this committee as their friend rather than an enemy.

Dr. LEDERER. Mr. Chairman, I can only restrict my remarks to my own industry, of course, and I want to tell you that I am sincere about it. Our attitude toward labor is not the attitude you have described. I want to make that absolutely clear to you.

The CHAIRMAN. How do you answer what I told you about asking the man at the filling stations about the hours they work and the pay they secure? That is not in one case or in any one locality. I asked them down here, and I asked them up in my State, in New Jersey and Maryland, and different places, when I would be coming down here to Washington in my machine, and invariably the answer is the same, that they are working longer hours and getting less pay than they did before the codes. Now certainly the Standard Oil Co. and the Shell, and these different organizations do not show any great sympathy for their employees where they take advantage of a law that Congress intended to shorten working hours and to increase the wages of their employees. They had been working 40 hours a week and getting $18 a week. Now, they are working 48 hours a week and getting $15.

Mr. Eagle.

Mr. EAGLE. I have nothing, Mr. Chairman.

The CHAIRMAN. Mr. Wood.

Mr. WOOD. You used the term "my own industry" in your statement. You are talking about the petroleum industry?

Dr. LEDERER. Yes; the petroleum industry.

Mr. WOOD. What position do you occupy in that industry?

Dr. LEDERER. At the present time?

Mr. WOOD. Yes.

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Dr. LEDERER. I am chairman of the labor subcommittee of the planning and coordination committee, devoting my entire time to labor matters.

Mr. WOOD. The planning and coordination committee. That means planning and coordination of the petroleum industry, does it?

Dr. LEDERER. The petroleum industry? Yes, sir; the President set it up in his act of September 3.

Mr. WOOD. What office do you hold in any corporation? You say you represent about 20 of them, do you?

Dr. LEDERER. No; I did not state that. I gave you the statistics of 20 companies.

Mr. WOOD. What organization do you represent here before this committee?

Dr. LEDERER. I represent the planning and coordination committee, which is the code authority of the petroleum industry and which was appointed by the President.

Mr. WOOD. What is your connection with any of these corporations, either as a stockholder or manager, or a member of the board of directors?

Dr. LEDERER. I am vice president, on leave of absence, of the Texas & Pacific Coal & Oil Co., of Fort Worth, Tex.

Mr. WOOD. The Texas-Pacific?

Dr. LEDERER. The Texas & Pacific Coal & Oil Co., of Fort Worth, Tex., which is an absolutely independent medium-sized, integrated company.

Mr. EAGLE. Which I, as a Texas man, can state is clean as a hound's tooth.

Dr. LEDERER. Thank you. I appreciate that very much.

Mr. WOOD. Does your corporation belong to this trade association represented by the oil industry?

Dr. LEDERER. It is not a trade association, Mr. Congressman. It is something the President created and set up to represent the industry. It is not a trade association. We are not here for a trade association, as representing a trade association. I am here to represent the Planning and Coordination Committee of this entire industry.

Mr. WOOD. You are representing the oil industry?

Dr. LEDERER. Yes, sir.

Mr. WOOD. Not the workers, but the managers?—

Dr. LEDERER. The employers, that is right; yes.

Mr. WOOD. You cannot shift your responsibility by saying you are on some committee appointed by the President. What I want to known is your connection with the oil industry, not as a member of this committee, but what is your business?

Dr. LEDERER. Vice president of the Texas-Pacific Coal & Oil Co. in Fort Worth, Tex.

Mr. WOOD. Now, does the Texas & Pacific Co. in any way have any relation to any other oil company with respect to these codes?

Dr. LEDERER. No; it is absolutely independent altogether.

Mr. WOOD. Who represents the oil industry before the code authority?

Dr. LEDERER. Before the Federal Government?

Mr. WOOD. Before the code authority in your hearings.

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Dr. LEDERER. The planning and coordination committee, or individuals if they so choose.

Mr. WOOD. You are speaking here for the oil industry, and you are telling this committee what the labor policies of the oil industry are. What I want to know is, are you speaking for the Standard Oil Co., the Shell Oil Co., and all of these other oil companies? Are you officially speaking for them today with respect to your testimony here on the labor policies of the whole industry?

Dr. LEDERER. Yes, sir.

Mr. WOOD. Are you authorized by those corporations to speak for them here today?

Dr. LEDERER. The Planning and Coordination Committee held its regular meeting last week.

Mr. WOOD. This Planning and Coordination Committee was appointed by the various organizations?

Dr. LEDERER. No; it was appointed by the President.

Mr. WOOD. Well, you selected your membership on the Planning and Coordination Committee?

Dr. LEDERER. The industry recommended the members to the Administrator.

Mr. WOOD. Yes; and they were appointed?

Dr. LEDERER. No; not all of them.

Mr. WOOD. The President appoints whoever you recommend, so you appoint them.

Dr. LEDERER. All right.

Mr. WOOD. How many are there on this Committee?

Dr. LEDERER. Twenty-one.

Mr. WOOD. Do they represent 21 corporations?

Dr. LEDERER. No; not all of them are corporations. Some of them are independent.

Mr. WOOD. How many corporations do those 21 represent?

Dr. LEDERER. Some of them are independent producers.

Mr. WOOD. Does any individual on this Committee represent more than one corporation?

Dr. LEDERER. No.

Mr. WOOD. Then the 21 members represent 21 corporations; that is, your Committee?

Dr. LEDERER. No; not this Committee. They represent the entire industry as a governing body as expressed by the President in his letter to the Administrator of August 19.

Mr. WOOD. You folks worked together in approving this code. The Oil Code was prepared by the oil interests?

Dr. LEDERER. Yes, sir.

Mr. WOOD. Are you working in unison?

Dr. LEDERER. Not always; but on the outside, anyhow.

Mr. WOOD. You are working there in unison, that is what I mean. How can you represent the Standard Oil Co., the Shell Oil Co., and 17 other corporations with reference to labor policies, without being connected officially with those corporations, unless you are an outside representative? When you are speaking for the Standard Oil Co., the Shell Oil Co., and the 19 other corporations not connected with your Texas and Pacific, you are an outside representative, speaking for those corporations here today?

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Dr. LEDERER. No, sir; I cannot so consider it.

Mr. WOOD. Why?

Dr. LEDERER. Because the Planning and Coordination Committee authorized me, as the Chairman of the Labor Subcommittee, to appear here.

Mr. WOOD. Yes; and this Planning and Coordination Committee represents 21 corporations, does it not?

Dr. LEDERER. No, sir; it does not.

Mr. WOOD. They represent the entire industry, do they not?

Dr. LEDERER. They represent the entire industry.

Mr. WOOD. Then, you have not stock in and are not officially connected with any other than the Texas-Pacific Co. in business relations in the carrying on of the oil business?

Dr. LEDERER. Right now I am on leave of absence from my company.

Mr. WOOD. You are on leave of absence from your company, but the Texas-Pacific is your company?

Dr. LEDERER. That is right.

Mr. WOOD. When you come here representing the other 20, telling this committee what their policies are, then you are a representative of the oil industry?

Dr. LEDERER. Yes.

Mr. WOOD. You do not necessarily have to have stock in each one of those 21 companies?

Dr. LEDERER. No.

Mr. WOOD. But you are selected to represent them here?

Dr. LEDERER. Yes.

Mr. WOOD. All right. Now, what is your objection, this being a national affair, to labor being accorded the same rights that you enjoy and under which you are protected in this law and in your trade associations and in your code? Why should you deny labor the right to select their representatives, even though that representative does not work in the plant, a representative who may be working across the street or in some other city or in an adjoining plant, but, nevertheless, he has been selected by a group of workers to represent them? Why should you object to that man representing them when you are here in the position of representing the oil industry of the United States? According to your own testimony, you have not any business—any direct business—relations with any of those other corporations insofar as production is concerned. In other words, you are criticizing and condemning the wage earner for wanting to be accorded the right—for insisting upon the right—to choose his own representatives, when the trade associations, including your whole industry, not only enjoy that right, but the very enactment of the National Recovery Act helps your trade association to organize themselves; and when you write a code and establish a code, the stipulations in that code must be acquiesced in, and every other producer in that line of industry must abide by that code, whether he belongs to your association or not. That is the law, that he must agree. He does not have to join your association; but if you set a certain minimum price on a commodity—he does not have to join your association—but he must agree not to engage in the unfair practice of selling his commodity below the price set by your association. I will say

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to you in that connection that that is something that labor has never done. Labor has never attempted to regulate the wages, hours, and working conditions of anybody outside of the organized craft itself. Labor has never said: "Now, we have an organization here. We have agreed on a certain stipulation in collective bargaining with a group of employers." Labor does not insist that all others in the United States in the same trade and calling, if they decide on a basis of 50 cents an hour, that all the rest of these unorganized groups who do not have to belong to the organization must charge 50 cents an hour for their labor.

Now, that is exactly what the trade associations have a right to do and what they are protected in, and what they are encouraged in and they were aided and abetted and assisted by the Federal Government through the enactment of this national recovery act. I voted for it myself, and I think it is a fine piece of legislation. I have no objection to that, because I realize that in order to prevent cutthroat competition and unfair trade practices that you must have some power to regulate the minimum price of a commodity. Now, why do you object to labor, to the wage earners organizing?

Dr. LEDERER. I do not object; I never stated that I objected.

Mr. WOOD. Then, you say that you are not opposed to the right kind of a labor organization. What do you call the "right kind" of a labor organization?

Dr. LEDERER. That is an organization which knows something of the business and is an organization of our own employees.

Mr. WOOD. Oh, that is it, is it?

Dr. LEDERER. Yes.

Mr. WOOD. That is your designation of the right kind of a labor organization, one that you can control?

Dr. LEDERER. Not control; no, sir. I can show you copy after copy of bylaws of what we call now, and what is condemned as, a company union, where there is no more control by the management exercised than I exercise.

Mr. WOOD. You know the large corporations have fooled the people for a long time, but the large corporations are not fooling this Congress. They have not fooled them at all. That is why this Congress enacted the "yellow dog" contract; that is why this Congress put section 7 (a) in this law; that is why Congress put a similar section in the Transportation Act; and it is also the reason for Congress' enacting the Bacon-Davis law. That is why this Congress has been bending every effort, the Progressive Members and most of the Members of Congress, to protect labor in its right to organize.

Dr. LEDERER. We have no objection to that.

Mr. WOOD. Now, Congress knows, and most of the people know, that company unions, in 99 out of 100 cases, are controlled by the companies. There is no question about that in any man's mind that knows the history of this.

Dr. LEDERER. Congressman, have you studied any of these bylaws of so-called "company unions"?

Mr. WOOD. Indeed I have.

Dr. LEDERER. Or did you just get the information from others?

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Mr. WOOD. We have had probably two or three dozen of those constitutions and bylaws placed in the record of this committee here. A great many members of this committee, and most of them, know a great deal about the operation of these company unions. Now, what is your objection to an organization, a bona fide organization of the American Federation of Labor or the four train-service brotherhoods?

Dr. LEDERER. There is no objection as long as the same responsibility as is placed on the industry by law is also placed on them. You can sue any company by law or a trade association, but you cannot do it with an unincorporated organization like a labor organization. We want to share authority and responsibility.

Mr. WOOD. You want labor incorporated? You want to make a corporation out of them; and you want to place them in a very compromising position, or a defenseless position, I would say, where if they make a move you would threaten them with a suit and destruction. That is an old practice, and that is the old advocacy of antiunion corporations and employers.

Mr. EAGLE. That is the old army game.

Mr. WOOD. Yes; the old army game. They had been so insistent upon them, that when the Sherman Antitrust Law was passed, everybody thought—the author of the law also thought—that it was passed for the sole purpose of curbing monopoly. That was the purpose and intention of Congress when the bill was passed; but in later years, through the manipulations of big business, and through their fine, keen, astute corporation lawyers and expert lobbyists, they have absolutely perverted the Sherman Antitrust Law. Through court decisions it has been made to apply to labor instead of the commodities, and the incorporation, consolidation, and trustification has gone merrily on. You know that as well as I do.

Dr. LEDERER. No; I am not a lawyer.

Mr. WOOD. I am not, either.

Dr. LEDERER. I cannot argue with you about that. I can only give you actual facts, which I know from close contact, which I have learned in traveling around the country.

Mr. WOOD. Yes.

Dr. LEDERER. Not only with employers of labor, but I have a pretty good record with labor organizations.

Mr. WOOD. I am glad to have you make that statement, that the proper kind of unions are those organized in the company, that you have control over, of course. There is no other reason why the head of a corporation would have such preference, only for the reason that he wants to control the men under him, the employees in his plant.

Dr. LEDERER. Wouldn't you rather deal with people, Mr. Congressman, who know conditions in your plant, with whom you can sit down and talk across the table and say, "Here are my books; how do you expect me to pay more?" You can't take just 16 or 18 of the major companies of the industry and say this is the industry, and then generalize on that. I tell you there are some pretty decent people in the oil business.

Mr. DUNN. Will the gentleman yield for a question or two?

Mr. WOOD. Yes.

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Mr. DUNN. It is on this same subject, Dr. Lederer. As to the Standard Oil Co. and the other companies that you represent; do they have oil fields in China, India, and the other countries?

Dr. LEDERER. I make the same answer, that I do not represent the Standard Oil Co. or the Shell Co. I represent the code. In fact, there is not a single Shell man on that board, and there is not a Gulf man on that board.

Mr. DUNN. I will take that for granted.

Dr. LEDERER. Some of these companies have, as far as I know, foreign possessions.

Mr. DUNN. Then, I have another question: Is it true that there are many independent corporations in Texas and other places where they produce oil that are unable to produce oil because of it being shipped in from China and other countries much cheaper than the American producers can produce it?

Dr. LEDERER. There is oil imported, an average of about 80,000 to 100,000 barrels of crude a day, imported into the United States, mostly from Mexico and Venezuela.

Mr. DUNN. About 80,000 barrels?

Dr. LEDERER. Eighty thousand to 100,000 a day.

Mr. DUNN. I see.

Dr. LEDERER. That is crude oil that is imported, and there is also now a little crude oil, about 30,000 barrels a day, imported from Colombia to Houston, where it is refined under bond, which is deposited with the United States Government, and it is then immediately shipped out of the country. It does not reach the United States markets at all. The 80,000 to 100,000 barrels which are imported is mostly Venezuelan and Mexican crude, used for the production of heavy asphalts and fuel oils which are distributed along the Atlantic coast. Now, the total refinery runs per day in 640 oil refineries in the United States, of which 640 are actually operated, is about 2,400,000 barrels.

Mr. DUNN. In other words, dosn't that have the tendency of having our independent oil men close down plants because of this oil being shipped in? In these other countries they can produce it cheaper because the standard of living is lower. For instance, I have received many letters on that subject and, in fact, I have had a committee come to my office to get some consideration of that under the code, maintaining that these big oil corporations that now control oil fields in other countries are able to ship it in cheaper than the independent man can produce it. That is the reason I asked you that question. It seems to me that would have a tendency to close up the independent man, because the standards of living of Americans and American workmen are much higher than the standards of living of people in other countries.

Dr. LEDERER. You are right about that, Mr. Congressman, and there is great dissension within the industry on that. We are not satisfied with the low tariff placed on imported crude oil, and especially not with the low tariff placed on imported naphtha gasoline from foreign refineries, which in our case is mostly Mexico and Venezuela.

Mr. DUNN. I have just one more question. You stated that much of the oil that comes into this country comes from Mexico and

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Venezuela, but you did not say anything about it coming in from China.

Dr. LEDERER. No, sir; China has no production of oil. We export to China quite a great amount of gasoline and kerosene. There is crude oil in Persia, but Persian crude does not come into the United States at all. It all comes into the English refineries and the French refineries. That has arisen since the pipe line from Iraq has been put through to the Gulf of Persia, and then it is transferred by ship through the Suez Canal. Our exports of finished products to England, France, and Germany have been greatly decreased, until the exports are practically nil, because they are producing it themselves.

Mr. DUNN. What about Mesopotamia, are there many productive oil fields there?

Dr. LEDERER. There are enormous oil fields there, mostly controlled by the British Government, through the Anglo-Persian Oil Co.

Mr. DUNN. As to the Mesopotamia oil fields, do you know whether the Standard Oil Co. controls at least 50 percent of the oil fields there?

Dr. LEDERER. Not Mesopotamia, but Iraq. They have one-third interest in the concessions. It is not the Standard Oil group but an amalgamation of large companies who own, together with the English Government and the French Government, one-third each of the old fields in Iraq. This group of American companies is the Standard Oil, the Texas, and the Gulf, who own one-third.

Mr. DUNN. That is enough.

Dr. LEDERER. But this oil does not come into the United States.

Mr. DUNN. It does not come into the United States at all?

Dr. LEDERER. No, sir; not a drop of it. It is used in the foreign refineries these companies have to supply their foreign trade.

Mr. DUNN. Thank you very much.

Mr. WOOD (presiding). Mr. Schneider.

Mr. SCHNEIDER. I just wanted to ask Dr. Lederer in reference to this planning and coordination board. You are the official representative of this board?

Dr. LEDERER. Why, I am right now. We have a chairman of course.

Mr. SCHNEIDER. Were you appointed as a member of that board?

Dr. LEDERER. I am not a member of the 21. You do not find me on the list.

Mr. SCHNEIDER. Are you secretary of the board?

Dr. LEDERER. No; I am chairman of the labor committee. We also have a marketing committee which has a chairman. We also have a refining committee, which has a chairman; and we have a transportation committee, which has a chairman.

Mr. SCHNEIDER. Who is on that labor committee now?

Dr. LEDERER. I am the chairman.

Mr. SCHNEIDER. How many are on that committee?

Dr. LEDERER. About 20 members distributed all over the United States.

Mr. SCHNEIDER. Are there any official representatives of labor on it?

Dr. LEDERER. No, sir; because this is the industry.

Mr. SCHNEIDER. That is the labor committee that outlines the policy of this industry?

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Dr. LEDERER. I would not say that. Our labor relations are absolutely controlled by the Labor Policy Board of the Department of the Interior, and we have our policy board set up by the Administrator, consisting of Dr. Stocking, Dr. Sapp, and Dr. Muhlenbach.

Mr. SCHNEIDER. The point I am making is that you are here representing this industry as an official of this Planning and Coordination Committee, on the labor end of that?

Dr. LEDERER. Yes; inasmuch as this was a labor question.

Mr. SCHNEIDER. You are in fact representing labor?

Dr. LEDERER. No; I am not a labor representative.

Mr. SCHNEIDER. You are not representing the laboring man at all? You are representing the employers?

Dr. LEDERER. Yes; and I hope I impressed you with my attitude, and that I started out as a laborer myself.

Mr. SCHNEIDER. I just wanted to get that point.

Dr. LEDERER. Yes, sir.

Mr. SCHNEIDER. If there was a true representative of your organized workers in your industry before this committee, do you think he would agree with you?

Dr. LEDERER. No; but he would agree on some points.

Mr. SCHNEIDER. I just want to follow up what Congressman Wood brought out, which was the fact that under the code the industry became thoroughly and completely organized, if it was not already organized before the codes went into effect. Under the codes and this plan and arrangement you set the rules and regulations and the prices and so forth for a commodity?

Dr. LEDERER. No prices; we have no price fixing in our industry.

Mr. SCHNEIDER. Everything but the prices, then?

Dr. LEDERER. We need prices, but, unfortunately, we haven't got them.

Mr. SCHNEIDER. The industry is thoroughly organized, however, and you are here before this committee representing the industry. Now, the codes meant that labor should be truly and completely organized into organizations of their own choice, without interference on the part of the employer in any way.

Dr. LEDERER. That is right.

Mr. SCHNEIDER. Now, then, the oil industry is now before this committee, but not as a representative of labor. There is nobody here to represent the laborers of the oil industry, to voice their sentiments on wages and with reference to legislation.

Dr. LEDERER. Didn't you gentlemen call Mr. Fremming who represents a certain small portion of our labor?

Mr. SCHNEIDER. No; I do not think he was here. This code and all of your set-up is all maintained by assessments upon the industry, and each company pays an assessment?

Dr. LEDERER. According to the code the industry has to be self-supporting.

Mr. SCHNEIDER. To make up the budget out of which your salary and your expenses and all of the other personnel of this tremendous organization of the industry, including a horde of attorneys that interpret these laws passed by the Government, are paid?

Dr. LEDERER. Of course, these attorneys are employed by the individual companies and not by the Planning and Coordination Committee.

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Mr. SCHNEIDER. Your associates on the code do not have any attorneys?

Dr. LEDERER. We retain one lawyer on a part-time basis. Congressman, the Oil Code Authority is not an iron-clad trade association. Our law is this book here, which has been approved by the President, and we get new interpretations from the Secretary of the Interior in regard to labor relations, and in regard to practices every week, a good many of them.

Mr. SCHNEIDER. I understand.

Dr. LEDERER. I mean some of these things are so vague and uncertain that we are afraid to move; that is, the industry is afraid to move without asking an attorney to interpret it. However, these attorneys that I speak about are employed by the individual companies in the industry.

Mr. SCHNEIDER. I understand; but if they employed fewer attorneys, they would be better off.

Dr. LEDERER. I agree with you on that.

Mr. SCHNEIDER. An assessment is put upon all of the corporations to make up this budget to pay the expenses of carrying on the work under these codes; that is, overhead expense that is charged up to the industry?

Dr. LEDERER. Yes, sir.

Mr. SCHNEIDER. Now, then, if labor wants representation, why, it must be financed by the small dues which are paid into the union by every individual worker in the industry. You say there are just a small number that are members of unions in the industry. Did you say about 6 percent of them?

Dr. LEDERER. It is 6 actually, and with the craft unions and service stations it is about 8 percent.

Mr. SCHNEIDER. That proves it, by the fact that they cannot be here, and yet the industry charges as its overhead expenses and passes it on to the public these millions for the purpose of representing industry and defeating the purpose of Congress in the enactment of these laws, to take all advantage of it, and to defeat labor.

Dr. LEDERER. I can't agree with you, Mr. Congressman.

Mr. SCHNEIDER. I would not expect you to agree with me.

Dr. LEDERER. Congressman, I do not take the attitude that I am against labor.

Mr. SCHNEIDER. I am not speaking of you personally. You are not here personally representing yourself, but as representing the industry.

Dr. LEDERER. Our industry does not take that attitude. These 21 men on this board have known me for years through other connections, and when they made a selection to come down here to Washington to devote all of my time, on leave of absence from my company, to devote my time to labor problems, they knew my attitude, and when last week Congress called on somebody to come up here to appear before the committee they chose me, and they knew my attitude. I have no orders from anybody as to what to say. I have no orders from anybody saying you have to protect labor or you have to protect industry. I want to be fair with everybody.

Mr. SCHNEIDER. However, you are representing industry. You are not here expressing your own personal views.

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Dr. LEDERER. No, sir; but I am permitted to express my views, because I would not take orders. I would not express different views if they were not mine.

Mr. WOOD. You are fair to labor from your viewpoint?

Dr. LEDERER. Pardon me?

Mr. WOOD. You are fair to labor from your viewpoint?

Dr. LEDERER. Yes; I believe not only from my own viewpoint but you can go and ask President Fremming, of the International Association of Oil Fields, Gas Well, and Refinery Workers, and all of his vice presidents, if I am fair to labor or not.

Mr. WOOD. Of course, that viewpoint also, I naturally assume, is the viewpoint of the people you represent.

Dr. LEDERER. I still maintain, gentlemen, that the industry is not as bad as you paint it, including the Standard Oil Co. They do a lot for their employees.

Mr. SCHNEIDER. I think whatever I have said in that respect will be borne out by the facts in the record. Is any member of your industry, any big company that is organized, that has its refineries organized under any union of the American Federation of Labor with the closed shop?

Dr. LEDERER. Yes; there are some.

Mr. SCHNEIDER. What companies are they?

Dr. LEDERER. I could not mention all of them off-hand. I just mention a few I know. There is the Ashland Refining Co., Ashland, Ky., and the Sinclair Co. in all of its refineries.

Mr. WOOD. That Sinclair agreement is just recently.

Dr. LEDERER. It was last—a year ago.

Mr. SCHNEIDER. Do you know the circumstances under which they were organized and entered into this union closed-shop agreement?

Dr. LEDERER. I know some of them.

Mr. SCHNEIDER. Well, the Sinclair and the Shell Co.

Dr. LEDERER. The Shell is not quite a closed shop. The Shell only recognizes, according to an election held a short while ago, the union as their representative. I made a contract, Mr. Congressman, when I was vice president of my company, with local no. 208 of the Oil Field Workers' Union, most peacefully; nobody forced me to do it. However, they represent only those employees who have chosen them as a medium for collective bargaining. I am here to tell you that I do not know who of these 160 men is a union man and who is not. I bargain with anybody that comes there.

Mr. WOOD. They are not an American Federation of Labor organization, are they?

Dr. LEDERER. Some of them are, but I do not know who are. As soon as that code came up, there appeared on the bulletin board a notice under my name, while I was still active with the company, that they can organize, they can choose their representatives, and my office is open to them, but that any benefit as a result of any such negotiations which will accrue to one group will certainly also accrue to t ıe other group and to all of our employees.

Mr. SCHNEIDER. That is always the rule.

Dr. LEDERER. That is true of most companies I get in contact with. gets an increase in wages through the union, the nonunion man gets from the efforts of the union man. When the union man pays his dues into the union and, through his efforts in collective bargaining,

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gets an increase in wages through the union, the nonunion man gets the benefit of it just the same as the union man does who brought it about.

Dr. LEDERER. I can also show the other man gets the benefits without being forced.

Mr. SCHNEIDER. He gets them just the same as though there was a union; is that it?

Dr. LEDERER. Absolutely.

Mr. SCHNEIDER. You contend then that the unions do not make for increase in wages and improvement of the worker's condition?

Dr. LEDERER. Not in our industry very much.

Mr. SCHNEIDER. How much?

Dr. LEDERER. I am speaking only of the industry. I agree with you that there are some bad conditions, and industry, as the chairman said, is blind; any industry is blind which thinks it can get away with conditions like that.

Mr. SCHNEIDER. Let me ask you: Are you in favor of any part of this bill we are proposing here?

Dr. LEDERER. I am not opposed in principle to this bill. I just would like to have it clear.

Mr. SCHNEIDER. Have you any proposals for clarifying it?

Dr. LEDERER. I am not a lawyer, Mr. Congressman. If you listened to my statement, or if you will have time to read it, I just drew your attention to a few things which, to me, as a practical man, seemed vague and might be the basis for considerable litigation.

Mr. SCHNEIDER. I thought from your statement you objected to practically all of the bill. That is why I asked you this question.

Dr. LEDERER. I said perfectly clearly that we are not opposed to labor legislation, but we prefer a labor law which will clarify our situation, clearly stating what we can do, and what we cannot do. At the same time, a law which will tell labor what they can do and what they cannot do. I am an executive who does not want to have 10 lawyers around him doing interpreting when it is a question affecting the case, of what is interference and what is coercion. You gentlemen as trained lawyers and lawmakers know what you want, but we fellows out in the field, we just do not want to have to turn around every time and ask a lawyer. I do not want to maintain a legal department in my organization. I want to use common sense.

Mr. SCHNEIDER. I may say to you that I am not a lawyer, either.

Dr. LEDERER. But you are a lawmaker.

Mr. SCHNEIDER. I am a lawmaker, and I have represented labor organizations a long time and met many employers under all circumstances, and I have always found that the more lawyers they have around the more trouble they have. Usually the employer that wants to deal fairly and does deal fairly with labor keeps the lawyer on the outside, and he stays out of trouble.

Now, you spoke about unions having representatives that do not know your industry. Is it not true that the Oil Workers' Union has representatives who are truly oil workers, and who do know the industry?

Dr. LEDERER. There are some of them, if you take men like Mr. Fremming, and you know them all, I guess.

Mr. SCHNEIDER. I do not know them all, but I have met some of them.

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Dr. LEDERER. If you take men like Mr. Fremming, president of the International Association of Oil Field Gas Well and Refinery Workers, and Mr. Phillips, vice president, who have spent their lives working more or less all over the oil business, not only in a particular place in the oil field, but in filling stations and oil refineries, men that can understand the financial situation of the company, the technical set-up, and so forth. I would call these men oil men, but I have had contact with boys, and I can say boys, because I am now 56 years old, and they are probably only 26 or 27, who came into my office and who tried to tell me all about my business, why I should pay these wages and where I was wrong. I would listen to them with all patience, and I would tell them, "Son, go back and learn something about the business."

Mr. SCHNEIDER. But, you will agree if all of the workers in the oil industry were in one large, compact organization under the American Federation of Labor, that the men representing the international union would be experienced oil men who understand all phases of the industry. Now, that is true in every union under the American Federation of Labor, and the reason these employers do not want to treat with the men representing these international unions is because of the fact that they do know all about the industry, and they cannot longer tell their workers a lot of lies about it. I have been in hundreds of offices where the employer had plainly misrepresented conditions in the industry to his employees. He resisted and refused to meet me, and when he did, as a general rule, it was against his will, but he had to face the facts, and that is the thing he did not like to do. Is it not natural for an employer who does not want to treat with his employees collectively, to want to treat with the men in his plant who do not know the conditions in the industry? Isn't it natural for him to do that for the reason that he immediately starts to tell him about all of the competitors he has here and there and the terrible conditions that exist there, and the employer who is opposed to dealing with his workers collectively, who does not claim that he is paying better wages than any of his competitors is the exception. Of course, the innocent worker who is on the job in the plant and the local unions does not know conditions, and he has to support his arguments by that means to dissuade them from demanding their rights.

You also spoke about profits, and you say they cannot give this increase in wages until there is a profit. Of course, it is true that industry is operating for a profit and not for the general welfare.

Dr. LEDERER. What do you call general welfare?

Mr. SCHNEIDER. Well, general welfare.

Dr. LEDERER. Industry is not a Shylock institution. Take my company, for instance.

Mr. SCHNEIDER. I am not talking about your company.

Dr. LEDERER. Take the Standard Oil Co., or I do not care which company you take; there are stockholders who, rightly or wrongly, have invested their savings in stock. Gambling on the stock exchanges, and investing money in stocks is one of our greatest pastimes. The waiter does it, the school teacher does it, the rich man does it, and the poor man does it. How can you say that the industry should be conducted just for the general welfare when there

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are people who have invested their money in the stock, and trusted the management to bring them some return on their investment? How can you pay those returns without making a reasonable profit?

Mr. WOOD. Pardon me, but it was not Mr. Schneider's contention that these companies should be operated for the general welfare. His statement was that your company or no other company is operated for the general welfare, that business is operated for profit, of course, and that is the only interest they have.

Dr. LEDERER. A great number of the smaller companies during the last 3 years, and my own company is one of them, have conducted their businesses in spite of losses, to keep their men on the pay roll. I have had to answer to the stockholders in meetings.

Mr. SCHNEIDER. And for other reasons also.

Dr. LEDERER. What are they?

Mr. SCHNEIDER. Obvious ones.

Dr. LEDERER. Because they do not want to go out of business.

Mr. SCHNEIDER. That is the first reason.

Dr. LEDERER. What would happen if we closed the plant down?

Mr. SCHNEIDER. Of course, all would suffer.

Dr. LEDERER. Surely they have got a duty toward the general public to keep going to keep these men living, and to get a livelihood.

Mr. SCHNEIDER. I want the record to show that there are not only hundreds but thousands of corporations in this country that have shut down because it was profitable for them to do so. They do not care for their employees.

Dr. LEDERER. That is a different proposition. I do not represent those men and I never would represent them.

Mr. SCHNEIDER. I am not charging you with it, but it is a fact just the same.

Dr. LEDERER. But you will find very few of them in the oil industry.

Mr. SCHNEIDER. There are hundreds and thousands of factories and mills in this country that are leased by representatives of industries to control the market and keep the products off the market, purely for the purpose of making the industry pay profits, and the thousands of employees who are employed in those factories are on the relief rolls and the public is taking care of them.

Dr. LEDERER. I think it is the silliest policy I can conceive.

Mr. SCHNEIDER. You know it is going on.

Dr. LEDERER. The more people who are unemployed and the greater burden on public relief, then the more taxes these fellows ought to pay. That is my attitude.

Mr. WOOD. Have you finished, Mr. Schneider?

Mr. SCHNEIDER. Yes; I am through.

Mr. WOOD. You mentioned something about the regimentation of industry a while ago.

Dr. LEDERER. Yes; under the code.

Mr. WOOD. Under the code and under the National Recovery Act.

Dr. LEDERER. Yes.

Mr. WOOD. In what way has industry been regimented? Are you opposed to this so-called "regimentation" that you mention?

Dr. LEDERER. Oh, there is a certain amount of regimentation that is necessary.

Mr. WOOD. What do you call regimentation?

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Dr. LEDERER. I call it regimentation if we have to report every time we do something to several agencies.

Mr. WOOD. What agencies?

Dr. LEDERER. Governmental agencies and State agencies, on all of the details of your business. I do not mean that we want to hide anything, but I want to say, Mr. Congressman, that in conducting a small company like our own, I know personally we had to take on eight additional clerks just to make all of the red-tape reports.

Mr. WOOD. Then you are opposed to that regimentation from your own testimony?

Dr. LEDERER. No; not in principle.

Mr. WOOD. I mean in actual practice. I am not talking about in principle, but I mean as is operated under the National Recovery Act.

Dr. LEDERER. Yes; there is room for lots of improvement, but I state again here, as I stated in my statement, that it takes time to develop those things.

Mr. WOOD. Did you know that the National Manufacturers Association and the National Chamber of Commerce asked the Seventy-third Congress to pass the provisions that are now embodied in the National Recovery Act relative to trade associations and industry? Did you know that?

Dr. LEDERER. I know something about that; yes.

Mr. WOOD. If I am not mistaken, the language of the law is almost exactly in accordance with the language recommended by Mr. Harriman and others. In 1933, in the special session of Congress, representatives of employers throughout this country came to this committee room in hearings we were then conducting on the Connery-Black 6-hour bill, and on one or two other measures, oil interests, steel, coal, manufacturing, the electrical industry, and all of these large corporations were represented here. They came here by the scores, and we conducted some 3 weeks of hearings, and they were not 30- or 40-minute hearings either. We started in at 10 o'clock in the morning; sometimes we finished at 4 or 5 o'clock in the evening, being excused from having to answer to the roll call in the House when it was in session, and without one single exception, every one of those employers came here and begged Congress to do something. They said, we are destroyed, or nearly destroyed. They all testified to the fact that industry was stagnant, the channels of trade and commerce were stagnant, cut-throat competition was rampant throughout the United States. They testified here that they could not get even the cost of production of their articles of commerce on account of the ravenous competition that endured since 1929. They begged this Congress and they begged the administration, came here upon their knees, admitted that industry had failed, and as a result of the importuning of all of these trade associations and groups, that session of Congress enacted the National Recovery Act as one of the 13 or 14 measures passed in that session for national recovery.

They agreed, or almost every industry, that they were in a desperate plight, that they could not help themselves and they were here humbly begging Congress to do something for them and save them from the crash and Congress did that. Congress passed the National Recovery Act, and they put in that law sections that not only accorded trade associations the right of organization, but the

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very law itself, its essence, its contents was practically a mandate to the employers of this country to get in their organizations and by and through the operation of the law, the trade associations of this country have practically 100 percent of membership in their organizations due to this so-called "regimentation" you are talking about.

Now, since industry is on the upturn, since they have, by and through the action of the Congress and the President of this United States, been saved from the crash and they very frankly predicted that they did not know what was going to happen and that is a matter of record in the House hearings, that they predicted they did not know what was going to happen, they were all fearful. They predicted, in a word, revolution, and they said they did not know what was going to become of our American institutions if we continued on very much longer. It was the consensus of opinion of nearly every man that appeared before that committee at that time that something had to be done immediately to save this American democracy. Congress rose to the situation and did it.

In every hearing we have held since then in the regular session and in this session of the Seventy-fourth Congress, every single employer that has appeared before this committee on any bill that we have here has agreed that they are in better shape now, far better shape than they were in on March 4, 1933, and they have all agreed in unison that the upturn is here, business is constantly improving, by and through the things that this administration has done and Congress, together with their own cooperation and the cooperation of all parties, that we are now on a sound foundation.

But, through all of this, with the consummation of over 700 codes, representing that many industries, large and small, we have the spectacle now of some 11 or 12 million people still unemployed. We have 21,000,000 or 22,000,000 upon relief. Wages have not risen, as had been expected by the Congress, and the hours of labor have not been reduced, as was the purpose, and expectation, of Congress when they passed the National Recovery Act.

It was immediately predicted, and it was the supposition of the Members of Congress that with the enactment and administration of the National Recovery Act that we would come back here in the Seventy-fourth Congress with a general 40-hour week, which we have not. We have failed, and we have fallen far short of the 40-hour week.

Now, this bill is designed to do no other thing than to give the wage earners just the right to organize and to prevent employers from discriminating against them, to prevent employers from intimidation and discrimination, and the records show that in spite of the provisions of section 7 (a) that employers, both large and small, have violated the purpose and intent, and the very spirit of section 7 (a) with impunity. They have discharged employees wholesale for the mere offense of identifying themselves with an organization of their choosing, or in joining an organization, or if they were organized, for attempting to get an agreement with collective bargaining. The employers have ignored, even brazenly violated the law of the land, in that they have carried on a systematic campaign in the last 8 or 9 months prior to the convening of this session of Congress, and I say a systematic, coordinated campaign of intimida-

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tion and coercion of the employees of industry to prevent them from exercising their right under the law to organize in an organization of their own choosing.

Now, this law is merely for the purpose of giving the wage earner an opportunity, without molestation from the employer, to join and form, or to organize a union of his own choosing, nothing else. The law, as I said before, has made it almost mandatory that the employers perfect their unions, which are called trade associations, and the employers themselves, the Manufacturers' Association, in their preamble recognize the right, or the rule of the majority in industry. The law recognizes that with respect to the employer, but when it comes to the employee, they do not recognize the right of the majority. In other words, the employers in all of their codes insist that whatever agreements are made with respect to prices, or the condition of industry, or any other condition, that when that code is adopted and a minimum price is set for a commodity, that all industries, although they do not belong to the trade associations, must abide by that rule of the majority, but when it comes to the wage earners, then they desert their former position, and then they contend that proportional representation should be the rule. In other words, that the minorities should be dealt with.

The automobile industry now is contending that in any plant where a majority of the employees have, by their vote, expressed their desire to become affiliated with the American Federation of Labor or a bona fide labor union, even though 90 percent of the employees of the industry, or of that plant, vote to become members or to be represented by that organization in collective bargaining, even in that situation, the automobile industry contends that they should also deal with this minority that voted for some other kind of an organization.

They know just as well as any other intelligent man or woman that that very rule tends to destroy any influence that the employee may have through the organization because, as is usually the case, where they have to grant a wage increase, if they have a company union of 20 percent of the men, and they have a bona fide union affiliated with the American Federation of Labor with 80 percent of the men in that union, if the majority exercise so much influence that the company is compelled to grant an increase, and they see that in order to prevent a cessation of work that they must make some concessions, when they decide to do that they go to the small company group and say:

Now, we have decided in our own mind, after giving the matter consideration, that we are going to give you boys a raise in wages, but when we give it to you we are going to give it to these other fellows, these 80 percent. They are from the outside union, but we are going to give it to you.

They deal with the company union. Now, what effect does that have when the majority brings about the condition where the employer must make some concessions and then he makes that little minority company group believe that because he loves them he is giving them an increase, and he tells them that he will give it to the others also?

Now, that has been the practice throughout the country, and that is an unfair labor practice. That is not in accordance with the purpose and intent of this law. That is not in accord with the

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Executive order issued by President Roosevelt in February of 1934, and this law attempts only to guarantee the freedom of the employee to become a member of a union of his own choosing. Now, if it is fair for one, it is fair for the other, and no one can gainsay that had it not been for the drastic measures that this Congress has enacted, we would not have saved business as we have. They said that we had turned radical. We were called communistic, socialistic, and we were called advocates of Russia by some people, all manner of criticism, most of it coming from business. After the laws have been passed, and administrations have been had, although some of the administrations have been very lax, we have gotten to the point where we all recognize that we are on the upward turn, and that is the purpose of those laws. I think it is the duty of the employers, in view of the fact that they have reaped the benefits of the National Recovery Act, and they have been saved from destruction and dissolution, that they ought to, in justice, accord the workers the right to organize if they so choose.

Dr. LEDERER. Will you permit me to make just one remark?

Mr. WOOD. Yes.

Dr. LEDERER. I want to go on record again and state that in our industry we have reemployed in 1 year 217,000 men. and have increased our pay roll about $34,000,000 a month. We are now at 107 percent of the 1929 peak standard of employment and almost 100 percent in actual dollars of wages, and 107 percent in real wages, based on the purchasing power of the dollar.

Mr. WOOD. I am glad to hear you make that statement. That coincides with just about what every employer has testified here. Some of them have not testified quite so rosily, but others have concurred with your testimony.

Dr. LEDERER. I still maintain, gentlemen, that I know a little bit about the oil business and labor relations. I do not talk about any other industry. I still maintain that the employees in our industry are of a very intelligent standard and type. I still maintain that most of them make a fair living, and realize that if the employers get more money we can pay more, and that the industry has always treated its employees fairly. I further contend that if their labor organizations have not yet had a larger membership in our employees, in spite of the fact that they tried mighty hard to get more, it is only because the employees in our industry are, I do not say, perfectly satisfied, but certainly happier than those in the coal mines or in other industries I know of.

Mr. WOOD. Of course, we have a difference of opinion, but we have had a very pleasant hearing and we have enjoyed your being here and appreciate your testimony. Is there any other witness who cares to appear? If not, we want to thank you for appearing.

Dr. LEDERER. Not at all. I thank you for the opportunity to appear. The only way to get together and make progress is by exchanging views.

Mr. WOOD. If there is no other witness who desires to testify, the committee will recess until next Tuesday morning.

(Whereupon, at 12:35 p. m., the committee adjourned until Tuesday, Apr. 9, 1935, at 10 a. m.)

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MISCELLANEOUS

Summary of Testimony in Favor of the National Labor Relations Act Before the Committee on Education and Labor, United States Senate

As counsel for the American Federation of Labor and for a large number of their affiliated unions, including the electric-railway unions, the bus unions, the steel unions, the automobile unions, and a number of others, I have given my time mainly for the past 12 months to the trial of what are called "7 (a) cases" before the National Labor Board, the National Labor Relations Board, the Steel Board, the Automobile Labor Board, the Petroleum Labor Policy Board, and a number of regional labor boards. I feel, therefore, qualified to speak in support of this bill.

This bill represents a logical advance in the necessarily expanding role of government in labor matters. The long neglect of this field of government must be remedied. The State's sanction to combinations of capital into large corporations, and mergers of those corporations into huge holding companies, some with assets in excess of two billions of dollars, the alliance of these employing concerns into trade associations and chambers of commerce, have placed employees, who rely on individual bargaining, completely at the mercy of their employers. This wrong must be redressed. Employees must have an equality of bargaining power. This can come only through self-organization and collective bargaining.

My duties carry me to different parts of the country where I am constantly in touch with workers. I am deeply impressed by the fact that what the worker wants above all else is the right to organize. He wants a say-so in the terms of his employment. He knows that as an individual employee he can never have this say-so; he knows it can come only through an organization with his fellow-employees, and through their joint spokesmen selected to deal with the employer.

What the worker asks through that great friend of labor, Senator Wagner, in this bill you have for consideration, is that the Government forbid the employer to interfere in the self-organization of the employees. That seems a simple request, but it is all that the worker asks. The day when the worker owned his own tools and had a shop of his own is long past. The passing is due to the laws enacted by the State, permitting combinations of capital and of employers. Great as these combinations have become during this century, in such huge corporations the the U. S. Steel, Bethlehem Steel, General Motors, and the utility holding companies, their cooperation as employers was immeasurably advanced by the provisions of the N. R. A., under which competing manufacturers could, with the sanction of law for the first time in 300 years, sit around the table and fix the price of their own product and limit the output of their own mills. These vast privileges are not without burdens, and these burdens fall on labor. This Congress, therefore, wisely concluded that some offsetting advantages should be granted to labor and so into the Recovery Act were written the famous words:

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion of employers", known through the land as "section 7 (a)."

The great steel strike, which would have come on the 16th of last June, was averted in the nick of time on the 15th of June by a promise to the steel workers of a Government board to enforce their rights. The following day the Seventy-third Congress passed its Joint Resolution No. 44, which was signed by the President 3 days later, and 10 days later he appointed the Steel Board. This Board and the Executive order appointing it were accepted by the steel industry, and the Board was notified by the largest of the steel corporations that

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they would cooperate with the Board. As counsel for the steel unions, I have brought dozens of cases before the Steel Board, most of them petitions for elections. Every steel-company defendant has come forward and denied the jurisdiction of the Board, has denied the constitutionality of the Recovery Act and of the joint resolution, despite all the price-fixing benefits that they have received under the Steel Code; and in some cases they have paid attorneys to represent employee representatives in taking the decisions of the Steel Board of the Circuit Court of Appeals for review. Elections are solely for the purpose of selecting representatives of employees for collective bargaining. Employers have no legal interest whatsoever in these elections, and the Steel Board has so ruled. Employers have no more say-so in the selection of representatives for collective bargaining by employees than employees have in the selection of the companies' representatives.

Suppose the United States and Mexico were seeking to adjust a boundary matter by negotiation through commissioners. How would it be regarded if the United States sought to influence the selection of certain commissioners to represent Mexico?

The chief request that labor makes of this Congress is to prohibit their employers from interfering in their right to self-organization. This bill is really a conservative measure. It reaffirms labor's right to organization, recognized by the courts in this country since 1842, made necessary in a Federal act now because of the laws permitting combinations of employers which make collective bargaining essential. What the Seventy-third Congress gave to railway labor this Congress should give to labor generally.

The Federal law which gives labor this right should be enforceable and should possess no "jokers." The workers of this country should never again go through the bitter disillusionment they have in the Government's failure to enforce section 7 (a) of the Recovery Act. Why the Government failed to enforce section 7 (a) will always be a mystery to the workers, but to many of them it is more than a mystery; it is a repudiation by the Government of what they had regarded as a solemn guarantee. Section 7 (a) has by no means been barren of results; hundreds of new unions owe their existence to it, and hundreds of thousands of workers in this country today stand erect and walk like free men because of 7 (a). More important still, 7 (a) has made the worker politically conscious. It has made him for the first time realize he has a Government and that he is a part of that Government. It has brought him for the first time in contact with his Government and he has come to feel that it is, in fact, his own Government. Section 7 (a) has made the worker a changed man; he will never again be the completely docile and supine being that he was before these words of hope were held out to him in the summer of 1933. Because of 7 (a) the labor movement in America will become a political movement. The worker will, in the future, send men to this Senate and to the House of Representatives who will represent his interests and not the interests of the people who oppress him. The results of the last November elections, which sent many new faces to this Senate and the House, are a demonstration of my assertion that 7 (a) has made labor politically conscious and that they will, in the future, send their own representatives to look after their interest on Capitol Hill.

The American Federation of Labor, through me as their counsel, filed with the Senate Committee on Education and Labor, on the 18th instant, a copy of the bill with proposed amendments. The most important of these was an amendment giving the right to workers or to their unions to go into court and enforce their rights.

The unfair labor practices enumerated in this bill, if enacted into law, will have to be adjudicated by the courts. It is hardly probable that these employers, who fight to the last ditch against the rights of their employees, will accept these principles until the courts have passed on them, but under this bill, as under the N. R. A., labor itself is not permitted to bring any court procedure, is not permitted even to become a party to the proceedings brought by the Board. They have no opportunity to argue their views upon the court. The cases which will be brought for the adjudication of these principles will all be tried by lawyers representing not labor, who is most vitally interested in them, but representing the public with impartial views and positions. This was true in the Wierton trial. The rights of labor were being adjudicated before Judge Nields in Wilmington, but labor was not permitted to be represented in the court. The Department of Justice attorneys took the view that

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they were representing the public. Labor itself in the adjudication of these principles should be permitted—through its own spokesmen, sympathetic with its attitude and well versed in all labor's contentions, and partisan, in every sense, of labor—to have representation in the court. This is the most important amendment which we ask this committee to make.

We think the prohibition against employers making contributions to employee representatives in collective bargaining should be absolute and should not have the exception provided in the bill. Under the definition of "labor organization", I have stricken out "employee representation plan" because, first of all, it is in no sense an organization—the most distinguished author of the plan, Mr. Arthur Young, vice president of the United States Steel Corporation, admitted before this committee last year that it is not a labor organization—but I have added "employee representation plan" under section 8, which forbids employers from interfering with labor organizations or employee plans.

The bill should make sure, if the most serious labor problem in America is to be cured, that the National Labor Relations Board have jurisdiction of the automobile industry, or that the President appoint for that industry a special, impartial board of three members, similar to the boards already appointed for the steel industry and for the textile industry. All boards under code authorities should be ended by this act.

And, finally, I would like to say a word about the social effects of the collective bargaining which will be instituted throughout this country if this bill is enacted. There can never be recovery until there is a restoration of the purchasing power of the people. A curtailed and extremely limited foreign trade throws us back on domestic purchasing power. This purchasing power can result only if the wage earners have more money to spend, and that money can come only from higher wages. Higher wages are not going to be voluntarily bestowed by the employer. Production, according to the financial editor of the New York Times, rose 2 percent during the first 9 months of 1934 and profits increased over 80 percent. Wage payments, according to the N. R. A. planning and research, are now 60 percent of what they were in 1926 and interest and dividends are 150 percent over 1926. Higher wages can be obtained in one way and one way only, and that is collective bargaining and conferences between the employer and employee, with the latter possessing an equality of bargaining power with the former. Unless we have, therefore, collective bargaining, higher wages, and increased purchasing power, we have got to take the other road of limited production; and production cannot be limited, except by voluntary concerted action of the producers or by the enforcement of the Government. In either event, it is what is called a "planned economy." It is really collectivism, and unless we have collective bargaining in a real sense we are bound to have collectivism.

Collective bargaining is really the heart of the "new deal." Every measure of the "new deal" is dependent on it. We cannot have recovery without it; we really cannot have social security or unemployment insurance, except it be made oppresive to the workers with the cost taken from their wages, unless there is collective bargaining. Collective bargaining and higher wages are the sure and just means of distributing wealth and income. The only remedy for the exceptional exploitation of labor and the degradation of human beings in the automobile industry, as found by the N. R. A., lies in collective-bargaining agreements, as recommended in the N. R. A. report. And collective bargaining is being frustrated by the Automobile Labor Board. The whole success of the "new deal" and of the Roosevelt administration depends upon the installation of collective bargaining in American industry. If collective bargaining fails, the "new deal" fails.

CHARLTON OGBURN.

BRIEF PRESENTED IN BEHALF OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, BEFORE THE HOUSE COMMITTEE ON LABOR, IN OPPOSITION TO THE NATIONAL LABOR RELATIONS BILL, H. R. 6817 AND H. R. 6288

Mr. Chairman and gentlemen of the committee, when the Wagner-Connery labor-disputes bill was before the last Congress, the Associated General Contractors of America were in full accord with the unqualified denunciation of the provisions of that proposal as unanimously expressed by representative

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business and industrial interests throughout the country. On practical and constitutional grounds we were opposed to its basic principle of making the employer's bargaining prerogatives subservient to those of the employee, as was attempted to be done in that bill under the guise of equalizing bargaining power.

We felt then, as we feel now, that no sound purpose could be served by stripping business and industrial management of its constitutionally conferred right to freedom of contract, and that, to the contrary, a very serious impediment to recovery would result if the question of labor relations in private industry was to be delegated to a Federal board created solely for the purpose of furthering the interests of organized labor, and without an equal affirmative power to see to it that justice is done to the employer.

Despite the earnest effort of the distinguished authors of that bill to work out a more acceptable substitute proposal, as is represented in the measure which you now have under consideration, they have failed to overcome our basic objection, which we have just recited. Aside from that, he has added as section 9 of his new bill the mandate that the representative of a majority of the employees in a unit (whether the unit be an employer unit, craft unit, plant unit, or other unit as the Board in each case may decide) shall be the exclusive representatives in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. Senator LaFollette, before the Senate Education and Labor Committee, already has pointed out the temptation for gerrymandering under this provision, which was admitted by Chairman Francis Biddle, of the National Labor Relations Board, with no other comment than that it is a risk that must be run in all democratic government. We deny that truly democratic government ever abrogates the equal application of constitutional rights to the minority, such as would be accomplished under section 9 of this bill by prohibiting workers to bargain individually or in minority groups with their employers.

However, we have no intention of taking your time by going into a detailed analysis of each of the various provisions of the bill. Our position can be concisely stated as being unalterably opposed to the proposal on principle, and as denying its application to our industry even should the bill be enacted with that intent. We rely for substantiation of the latter stand upon a preponderance of clear-cut opinions by the Supreme Court of the United States as to the extent of the power of Congress to regulate business under the commerce clause of the Constitution, which is the power upon which the pending proposal admittedly is predicated. Our contentions in this regard recently have been lucidly enunciated in the decision of the District Court of the United States for the District of Delaware in its decision and opinion on the *Weirton Steel Co. case*, to which we believe this committee should give studied consideration before passing upon the pending bill.

We also desire to submit as briefly as possible additional judicial opinion which we believe to be germane and which constitutes an undeniable indictment and rejection of the purposes and intent of the National labor-relations bill.

For instance, in its consideration of the case of *Adair* v. *United States* (208 U. S., 161), the Supreme Court had before it the question of the right of Congress to prohibit in section 10 of the Erdman Act the discharge of an employee because of his membership in a labor union and the question as to the extent that Congress may legally go under its power to regulate interstate commerce.

We wish to impress upon you that this act related only to common carriers engaged in interstate commerce, over which Congress admittedly has jurisdiction, and did not apply, as the proponents of the bill under consideration would have it apply, to all industry regardless of its interstate character. In holding the provision unconstitutional, the Supreme Court, in an opinion by Mr. Justice John Marshall Harlan, stated as follows:

"The first inquiry is whether the part of the 10th section of the act of 1898 upon which the first count of the indictment was based is repugnant to the fifth amendment of the Constitution declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section, in the particular mentioned, is an invasion of the personal liberty as well as the right of property, guaranteed by that amendment. It was the right of the defendant to prescribe the terms upon which the services of Coppage would be accepted, and it was the right of Coppage to become or not, as he chose, an employee of the railroad company upon the terms

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offered to him. Mr. Cooley, in his treatise on torts, p. 278, well says: 'It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With this reason neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and if he is wrongfully deprived of this right by others, he is entitled to redress.' * * *

"While, as already suggested, the rights of liberty and property guaranteed by the Constitution against deprivation without due process of law, is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of Government—at least in the absence of contract between parties—to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee—in all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land. (Cites cases in support.)

"Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the States, must have some real or substantial relation to or connection with the commerce regulated. But what possible legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce Such relation to a labor organization cannot have, in itself and in the eye of the law, any bearing upon the commerce with which the employee is connected by his labor and services. * * *

"Looking alone at the words of the statute for the purpose of ascertaining its scope and effect, and of determining its validity, we hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part. If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ in the conduct of its interstate business only members of labor organizations, or only those who are not members of such organziations—a power which could not be recognized as existing under the Constitution of the United States. * * * We need scarcely repeat what this court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, cannot be exerted in violation of any fundamental right secured by other provisions of the Constitution. (Cites *Gibbons* v. *Ogden*, 9 Wheat. 1, 196; *Lottery case*, 188 U. S. 321, 353.) the defendant was convicted must be held to be repugnant to the fifth amendment and as not embraced by nor within the power of Congress to regulate interstate commerce, but under the guise of regulating interstate commerce and as applied to this case it arbitrarily sanctions as illegal invasion of the personal liberty as well as the right of property of the defendant Adair."

Now, it is true that two very distinguished members of the court dissented from the majority opinion, but it is noteworthy that in their dissenting opinions they clearly indicated their belief that there is a limit to the extent to which Congress may constitutionally go in legislation of this character. Mr. Justice McKenna, for instance, stated that: "I grant that there are rights which can have no material measure. There are rights which, when exercised in a private business, may not be disturbed or limited. With them we are not concerned. We are dealing with rights exercised in a quasi-public business and therefore subject to control in the interest of the public." Surely Congress is not prepared to say that all business is quasi-public business, as it would do through enactment of this bill, and thus strip every business man of his fundamental rights under the Constitution.

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Mr. Justice Oliver Wendell Holmes, in his dissenting opinion, likewise recognized a very definite line beyond which Congress might not go, even in its regulation of the railroads under its power to regulate interstate commerce, when he stated as follows:

"The ground on which this particular law is held bad is not so much that it deals with matters remote from commerce among the States, as that it interfers with the paramount individual rights, secured by the fifth amendment. The section is, in substance, a very limited interference with freedom of contract, no more. It does not require the carriers to employ any one. It does not forbid them to refuse to employ anyone, for any reason they deem good, even where the notion of choice of persons in a fiction and wholesale employment is necessary upon general principles that it might be proper to control. The section simply prohibits the more powerful party to exact certain undertakings, or to threaten dismissal or unjustly discriminate on certain grounds against those already employed."

It will be seen that the intent of section 10 of the Erdman Act, and the intent of the national labor relations bill are very similar, although the latter is much more drastic and of limitless application. In view of the Supreme Court's decision as to the former, therefore, it is impossible for anyone to honestly conceive of the court sustaining the provisions of the Wagner bill. As a matter of fact, the Court's decision in the case which we have just recited to you, together with its decision in the *Employers' Liability cases* (*Howard* v. *Illinois Central Central Railway Co.*, (207 U. S., 463), raises a serious question as to the validity of the labor provisions in the National Industrial Recovery Act, itself.

Under the National Industrial Recovery Act, and under the national labor relations bill, Congress attempts to regulate all business, of whatever nature, on the ground that all business has some bearing on interstate commerce. It completely ignores the fact, sustained by the Supreme Court, that production is not commerce. The business that the members of our association are engaged in, general contracting, is primarily production and not commerce and this viewpoint is sustained by the Supreme Court's opinion by Mr. Justice Edward Douglass White in the *Employers' Liability cases* as follows:

"It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce, thereby submits all of his business concerns to the regulating power of Congress. To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely State concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."

For the reasons that we have cited, and in the interests of the industrial welfare of the Nation, the Associated General Contractors of America urge that the national labor relations bill be not favorably reported by this committee.

Statement of Edw. E. S. Kephart

Gentlemen, as president of the Buckeye Lodge, No. 174, of the Amalgamated Association of Iron, Steel, and Tin Workers, a self-organization of the employees of the McDonald Mills of the Carnegie Steel Co. (a subsidiary of the United States Steel Corporation), I am vitally interested in the enactment of the bill under consideration for the following reasons:

(1) The necessity for real collective bargaining in the steel industry. This needs no elaboration as it is conceded by the industry itself. I may refer to the testimony of Hon. Nathan Miller, general counsel of the United States Steel Corporation, before the Senate committee considering a previous version

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of this bill last year, where he admitted to the soundness of the principle of collective bargaining and the necessity, particularly in large corporations, of some means to fulfill this principle.

(2) The denial of this principle by certain companies has been very injurious to the general welfare of the people of the United States. It has directly fostered the principles of fascism, particularly through the employee-representative plans, or as it is commonly known, "the company union." It has indirectly been responsible for the strengthening of communism through the despair of workmen that real and honest collective bargaining can be achieved through the machinery provided in our present form of Government. Substance for their argument has been supplied by the defiant and rebellious front that many companies have put to the various agencies designated to effectuate the principle of collective bargaining. This is a very serious matter today and will be a hundred times more so if no relief is provided by the Seventy-fourth Congress.

(3) The gross inadequacy of the so-called "employee-representative plan" for real collective bargaining and its demoralizing effect on the workmen. To understand the meaning of the above statement I will present briefly the experiences of the men in the McDonald mills of the Carnegie Steel Co. under this plan.

Shortly before the date of effectiveness of the National Industrial Recovery Act in 1933, announcement was made of a new and enlightened plan of collective bargaining which would be offered to the men by the company. A group was arbitrarily selected by the management to form a preliminary committee. The group was originally under the impression it was to be consulted as to the provisions of the plan. But this was not the case. On meeting with the management they were met with the completed plan and it was explained to them with the idea of selling it to the men. They were not consulted on the least detail of the plan. This undemocratic action was, of course, viewed with suspicion but the workmen concluded they would give it a trial and see if it was workable. The sole function of the workmen was to elect representatives to carry out the plan. This they did.

After a few months experience, the futility of the plan was painfully evident as far as collective bargaining was concerned. It did provide, after a fashion, a sort of a grievance committee. However, with no real power and no means of acquiring that power. The discontent of the workmen climaxed in the formation of Buckeye Lodge of the Amalgamated Association of Iron, Steel, and Tin Workers, an American Federation of Labor affiliate.

On February 17, 1934, a form letter was distributed to the employees announcing that certain changes were to be made in the plan, and that the representatives had recommended that the new plan be voted on by all employees. This was done and the employees of the McDonald plant voted adversely to the new plan. It was the thought of the Buckeye Lodge that if we participated in the vote and showed the company that a majority of the workmen in our plant were opposed to the employee representative plan that the plan would cease to exist and the organization preferred by the majority of the workmen, viz, Buckeye Lodge of the Amalgamated Association would be recognized by the company as the collective bargaining agency of the McDonald mills. This view was substantiated by the statements of several of the employee representatives that if an adverse vote were rendered, the plan would be eliminated.

This, however, was not the case. Through the company's arbitrary decision, the plan was administered through districts and not by any logical collective-bargaining grouping such as plants. The plan received enough majority in the other two plants of the Youngstown district to impose it on the McDonald plant. A significant fact is that the plants wherein the plan was approved are without any type of true labor organization. Much confusion was made in the minds of the men because of the type of ballot used. It read, "Are you in favor of the employee representative plan as amended", with spaces in which to make an "X" under "yes" or "no." The company in announcing the vote gave the impression that the men had affirmed the employee representative plan as preferred to an independent organization when nothing could be further from the truth. The employees have never had the slightest voice in independently making provisions in the plan. An interesting and peculiar feature of the voting was the erection of two large signs in the voting place, saying "vote yes", "employee representatives." Also, the employee representatives, avowed advocates of the amended plan, were the only ones to assist

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illiterate voters in marking their ballots. A natural reluctance to participate in the next election of employee representatives was shown by the men and when this became apparent varying degrees of coercion were used to get them to vote. Among these were appeals to friendship by various bosses who said they might be criticized if their men did not vote, repeated urging by foremen, one man being approached seven times by officials before his resistance broke and he voted; the use of veiled insinuations was also prevalent.

We do not believe it advisable at this time to go into detail as to the ineffectiveness of the employee representative plan as it is so generally conceded that company unions are merely fostered by the company to defeat true collective bargaining as to make this unnecessary. However, if any doubt exists in the minds of the committee, they merely have to examine the details of the plan or refer to the National Labor Board's decisions regarding company unions.

(4) The repeated and discouraging refusals of the companies to deal collectively with bona fide labor organizations has fostered an air of desperation in the minds of many workmen and this "shoot the works" attitude can very possibly result in an industrial chaos, the like of which this country has never before seen.

(5) We, Buckeye Lodge, can testify that since our inception and attempt to deal with the Carnegie Steel Co. there never has been made the slightest effort by the company to cooperate with us in real collective bargaining. The only results have been repeated discussions and mostly rebuffs on things of importance. This is an impossible situation that cannot long exist in a free country. We took literally the language of section 7 (a) of National Industrial Recovery Act and have cooperated with our Government to facilitate recovery in every possible way; now we feel that we have the full right to demand that our faithful performance of duty be recognized by the Congress of the United States by the enactment of the Wagner-Connery labor-relations bill.

ASSOCIATION OF EMPLOYEES,
AMERICAN TELEPHONE & TELEGRAPH CO.,
New York, April 1, 1935.

Hon. WILLIAM P. CONNERY,
Chairman of House Committee on Labor, Washington, D. C.

DEAR MR. CONNERY: In connection with the proposed "National Labor Relations Act", now in the hands of your committee, we are attaching for your consideration a copy of testimony submitted by a committee of ours before the Senate Committee on Education and Labor outlining our views regarding certain portions of the proposed act.

We believe our organization as now established conforms to all the principles laid down in the proposed act with the exception of the furnishing of financial support by our employer. Our experience through the past 15 years has been such as to confirm our belief that the furnishing of financial support if obtained as a result of collective bargaining does not hamper the proper functioning of a labor organization.

We, therefore, respectfully request that the attached statement be included and become a part of the record of hearings before your committee and that the changes therein recommended regarding the proposed bill, S. 1958, be also made in a similar bill now before the Labor Committee of which you are chairman.

Yours very truly,

FIFTH GENERAL EXECUTIVE BOARD,
T. V. CONWAY, *Chairman.*

TESTIMONY PRESENTED ON BEHALF OF THE ASSOCIATION OF EMPLOYEES, LONG LINES DEPARTMENT, AMERICAN TELEPHONE AND TELEGRAPH CO., TO BE ENTERED IN AND BE PART OF THE RECORD OF HEARINGS BEFORE THE SENATE COMMITTEE ON EDUCATION AND LABOR CONCERNING THE PROPOSED BILL (S. 1958) ENTITLED "NATIONAL LABOR RELATIONS ACT."

We represent an organization of approximately 10,000 employees, known as the "Association of Employees, Long Lines Department, American Telephone & Telegraph Co.", and have been authorized to propose to this committee a change in paragraph 2, section 8, of the proposed bill, S. 1958.

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It is not our desire as an organization of employees to oppose or to discuss any other provisions of this bill. Quite naturally our individual members have varying opinions concerning each part of the bill and it would be difficult to ascertain and present a majority opinion concerning each item and particularly concerning any provision that may have political significance.

Concerning the discussion of the relative merits of company unions versus other unions, it is not our desire to oppose or criticize the so-called "regular union." We may say that the mapority of our people believe that those organizations are not only desirable but quite necessary, in a large number of cases, to adequately safeguard labor. We do, however, believe that our organization meets our needs and we do not wish to see enacted any legislation that would seriously interfere with our method of handling our problems.

We wish to outline the set-up and the history of the functioning of our organization in order to provide the background for our satisfaction with our present plan and to satisfy this committee that we are doing what is expected of a conscientious labor organization, which, as we see it, is to constantly improve our members' standard of living and, in doing so, exercise a real appreciation of our responsibilities affecting our industry and the industrial health and peace of the Nation.

The Association of Employees was formed December 31, 1919, by employee representatives chosen by the employees. Membership in the association has never been a condition of employment nor of participation in our pension and benefit plans.

It has been, from time to time, constitutionally developed and strengthened at our own initiative to more effectively serve the employees.

In order that insofar as possible our dissatisfactions may be settled at their source, our organization closely parallels the management organization. Local branches, our basic unit body, are established in the communities where our employees are located, higher bodies being successively district, division, department, and general boards. Officers are elected by each body.

Representatives are sent from each body to the next higher body, composed of such representatives, and are elected from and by the members of the body being represented. Management people (roughly defined as those having the right to hire and fire) are not permitted membership and may not attend or participate in the elections or business meetings of any bodies.

We have never known or heard of any attempt on the part of the management to influence any election of officers or representatives. We constantly use a provision made for carrying cases progressively to higher bodies when agreements satisfactory to employees are not reached with the managment in lower bodies.

There are no restrictions within our own organization as to what type of question we may negotiate with the management nor has the management ever shown any reluctance to negotiate any type of case with us.

Association members are responsible only to the association for their acts in connection with the functioning of the association. Meetings are regularly scheduled, monthly for the branch executive committees and annually and semiannually for the higher bodies. Special meetings are called at the discretion of the association. The officers and representatives are excused without loss of pay to perform their association duties.

The association annually negotiates with the management a budget covering the succeeding year's association expenses and is responsible for the administration of the association's financial expenditures.

We believe that this organization can continue exactly as at present should this bill be passed as proposed, with the exception of the proposed paragraph 2 of section 8. It is our conviction, based on our experience, that an employer can financially support an employee organization without violating any of the other provisions of this section. We therefore recommend that paragraph 2 of section 8 of this bill be changed to read as follows:

"To dominate or interfere with the formation or administration of any labor organization or to contribute financial or other material supprt to it by compensating anyone for services performed in behalf of any labor organization, or by any other means whatsoever, except that it shall not be an unfair labor practice for an employer or anyone acting in his interest to contribute such financial or material support, provided that an agreement is made between the employer and the labor organization covering such material support by the employer for a definite period of not less than 1 year subsequent to the date of making the agreement."

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We do not believe that the act of financial support has of itself any subversive effect on the functioning of any labor organization or on the members of such an organization. The controlling effect of such support could be brought to bear if the labor organization had to obtain their company's approval for expenditures on each action they desired to take as the need for such action presented itself. With a prior agreement covering expenditures, this controlling effect is eliminated to just the extent the labor organization feels is essential. By this we mean that under the other provisions of the bill and under section 7 (a) of the National Industrial Recovery Act the employees are free to organize as they choose and if they cannot obtain a financial support agreement suitable to their needs they may organize in any manner they desire.

For 15 years we have handled the problems of our members scattered in groups of various sizes throughout practically the whole of the United States. In this period we have constantly improved our standard of living, have settled our cases peacefully and have been a real asset to ourselves, to the industry, and to the Nation. We know that we have the necessary ability within ourselves to handle our problems and have the intelligence to decide for ourselves the type of organization we want for collective bargaining. We have no feeling of asking for a paternalistic favor when negotiating our annual expense budget with the management and handle that detail with the same freedom as any other case furthering our interests.

Our record seems to justify by those responsible for the guidance of our country, a careful consideration before eliminating such organizations as ours from their very evident field of usefulness and we ask a continuation of our right to make for ourselves those decisions affecting us as do those matters covered by this bill.

These statements are in intent and purpose the same as those made on April 4, 1934, by a representative of our organization who appeared before the United States Senate Committee on Education and Labor and submitted a statement of our views regarding the then proposed Wagner Labor Disputes act, S. 2926.

DETROIT STEEL PRODUCTS CO.,
Detroit, Mich., March 19, 1935.

Hon. WM. P. CONNERY, JR.,
Chairman Committee on Labor, House Office Building,
Washington, D. C.

DEAR CONGRESSMAN CONNERY: It seems to me that bill H. R. 6288 will imperil tremendously the open-shop policy so satisfactorily employed in the United States for a good many years and would jeopardize the opportunity of employers dealing directly with employees on the basis satisfactory to them without coercion from outside sources.

I hope, therefore, you will oppose this bill and request that my communication in this connection be made a part of the record of the committee's hearings.

Yours sincerely,

MASON P. RUMNEY, *Vice President.*

AGRICULTURAL STRIKES OF 1933

The agricultural strikes which swept California agricultural districts in 1933 were the most extensive strikes of their kind in the agricultural history of California, as well as of the United States. For the total number of men involved, the crops affected, and the number of strikes taking place no comparison based on past experiences is at all possible.

The magnitude of the strikes may be surmised by the fact that practically all the major crops of the State, such as grapes, peaches, sugar beets, pears, lettuce, cotton, and a number of others were affected directly and in danger of suffering serious losses. Of the total California crop value of 1933, the fruit crop, most affected by strikes, amounted to $128,124,000, while the field vegetable crops, in which strikes were extensive, amounted to $54,941,000. Together with the cotton crop, which amounted to $12,397,000, the agricultural strikes involved approximately 65 percent of the State's entire crop value of 1933.

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STATISTICAL DATA ON STRIKES

In presenting statistical data on strikes attention must be called to the circumstance that most of the data presented below was compiled from current newspaper accounts, supplemented and corrected by such field reports of the agents of the State Department of Industrial Relations, Division of Labor Statistics and Law Enforcement, as were available. As in most instances, the newspaper estimates on the number of men involved in the individual strikes were usually guesses, often exaggerated, still more often underestimated, depending on whether the information of the reporter was obtained from the growers or the strikers; no amount of corrections made could possibly yield the actual number of workers involved in all the strikes, or even in the individual strikes. Moreover, some reports on strikes failed to mention either the number of men involved in a strike or the duration of a strike or the cause of a given strike or the settlement made, while a number of smaller strikes were not reported at all.

Furthermore, in following the day-to-day development of a strike in a given locality, or in several localities, but involving the same crop, the number of strikers reported was constantly changing, sometimes more were reported as being on strike and sometimes less, depending on the progress of the strike in question and on the estimating moods of the reporter.

Due to the circumstances mentioned, the strike data computed by this office is at best a rough approximation of the actual, and under no circumstances can be viewed in any other light.

The following tabulation summarizes the estimated number of strikes, the estimated number of workers directly involved, and the estimated work days lost, together with the kind of crop involved and the locality of strikes:

Crop	Number of strikes	Estimated number of workers	Estimated days lost	Number of strikes		Locality of strikes
				Gains	Lost	
Peas	6	3,900	38,750	4	2	San Luis Obispo, Santa Maria, Niles, San Jose, Hayward, Elmhurst, San Leandro.
Lettuce	3	3,700	25,800	2	(1)	Imperial and Salinas Valley.
Cherry	1	800	5,600	1		Mountain View.
Berry	1	1,500	45,000		1	El Monte, Los Angeles.
Apricots	2	2,200	10,400	1	1	Modest, Eureka.
Peaches	8	5,050	34,150	8		Tulare, Chico, Merced, Gridley, Modesto.
Pears	3	1,600	7,800	3		Sacramento, Fairfield, San Jose.
Beets	2	1,550	21,700	2		Oxnard, Salinas.
Tomatoes	1	400	4,400	1		San Diego.
Hops	2	1,025	3,050		2	Sacramento, Healdsburg.
Grapes	5	8,250	57,750	5		Fresno, Dodi, etc.
Cotton	1	15,000	405,000	1		San Joaquin Valley.
Cantaloup	1	2,000	4,000		1	Imperial Valley.
Prunes	1	600	6,000	1		Gridley.
Total	37	47,575	669,400	29	7	

[1] Unknown.

As is shown in the tabulation, close to 50,000 agricultural wage earners were involved during the 1933 strikes, with a loss of approximately 700,000 working days. It should be mentioned that the total of 37 strikes appearing in the tabulation does not necessarily represent the number of strikes which actually took place, for, as in the case of the cotton strike, although it is recorded in the tabulation as one strike, represented actually several strikes, if judged by the number of localities involved.

The strikes affected, as is seen in the tabulation, 14 crops. Of the crops involved the cotton crop was the only one in which all the picking operations were tied up completely for a period of 27 days.

Three strikes out of the total were participated in by over 5,000 workers, viz, the peach strike, the grape strike, and the cotton strike, which accounted for 15,000 strikers.

Finally, the tabulation shows that of the 37 strikes listed 29 resulted in gains, 7 were reported as lost, with 1 unaccounted for.

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The following tabulation summarizes the month-to-month movement of strikes:

Monthly summary of strikes

Month	Number of strikes	Estimated number of workers	Estimated work days lost	Strikes reported		
				Gains	Lost	Unreported
April	3	2,950	36,850	3		
May	1	700	9,800	1		
June	3	2,550	51,600	1	2	
July	2	2,200	10,400	1	1	
August	17	10,625	73,100	14	2	1
September	6	8,850	63,750	6		
October	2	17,000	419,000	2		
November	2	2,200	4,400		2	
December	1	500	500	1		
Total	37	47,575	669,400	29	7	1

As the tabulation indicates, strikes began in April and continued with different degrees of intensity until December. From the point of view of the number of strikes, the month of August, with 17 strikes recorded, witnessed the greatest number of strikes, although from the point of view of the number of workers involved in strikes the month of October shows the largest number of strikers engaged in strike struggles.

DEMANDS OF STRIKERS

Without exception, the demand for increase in wages underlied all of the reported strikes. In the majority of cases the strikers demanded 35 cents an hour, as against the prevailing average of 15 cents per hour, although in some instances, due to the pressure of strike threats, the minimum wage, in a number of places, was advanced to 17½ cents and to 20 cents an hour prior to the declaration of the strike or during its progress.

Union recognition was the next demand appearing most frequently, followed by demands for improved conditions, mostly for the abolition of the contract system, and, lastly, for a decrease of hours of work. The following tabulation summarizes the causes of strikes:

Cause	Number of strikes	Percent of total
Wages	37	100
Recognition of union	9	24.3
Conditions	6	16.3
Hours	5	13.5

According to the available information of the total number of strikes the Cannery Agricultural Industrial Workers Union, affiliated with the Trade Union Unity League, supplied leadership in 24 strikes, or 65 percent of the total strikes; the agricultural unions affiliated with the American Federation of Labor led in 2 strikes, or 5 percent of the total; the independent unions (Mexican) accounted also for 2 strikes, or 5 percent of the total. One of the interesting aspects of the agricultural strikes in 1933 was the relatively large number of spontaneous strikes which, on the basis of all available information, were in no way connected with any organizations active in the strikes. There were six spontaneous strikes, or 16 percent of the total, which apparently were not corrected either with the Cannery Agricultural Industrial Union or the unions affiliated with the American Federation of Labor. Finally, three strikes, or 8 percent of the total, could not have been traced to having connections with any of the organizations mentioned and were either of a spontaneous character, or were connected possibly indirectly with the Cannery Agricultural Workers Industrial Union.

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The following summarizes the number of strikes on the basis of leadership:

Organization	Number of strikes led	Percent of total
Cannery Agricultural Workers Industrial Union	24	65
Unions affiliated with the American Federation of Labor	2	5.4
Independent unions	2	5.4
Spontaneous	6	16.1
Unknown	3	8
Total	37	100

Of the 47,575 workers engaged in strikes in 1933, 37,550, or 79 percent of the total were under the leadership of the Cannery Agricultural Workers Industrial Union; 2,200, or 4.6 percent, were under the leadership of unions affiliated with the American Federation of Labor; 3,725, or 7.8 percent of the total, were involved in spontaneous strikes; 1,500, or 3.1 percent, were under unknown leadership; and 2,600, or 5.5 percent, were under the leadership of the independent unions. It is clear therefore that the Cannery Agricultural Workers Industrial Union played by far the more important role in the agricultural strikes in 1933 than the other labor organizations, both as to the number of strikes led and the number of men under its guidance. The data on the number of men led by each group of organizations may be summarized as follows:

Organization	Number of men led	Percent of total
Cannery Agricultural Workers Industrial Union	37,550	79.0
American Federation of Labor unions	2,200	4.6
Independent unions	2,600	5.5
Spontaneous	3,725	7.8
Unknown	1,500	3.1

RESULTS OF STRIKES

Of the 37 strikes reported, 29 led to gains to the strikers; 7 strikes were reported as lost; and 1 could not be traced as to results. With the exception of only one strike, the gains reported were always below those originally demanded by the strikers, so that the gains represented only partial and not complete victory for the strikers.

Of the 24 strikes led by the C. A. W. I. U., 21 strikes, affecting 32,800 workers, resulted in partial increase of wages to the workers, the new scale averaging 25 cents an hour, while 4 strikes, affecting 4,750 workers, were lost. Of the 2 strikes led by unions affiliated with the American Federation of Labor, 1 strike, affecting 2,000 workers, resulted in a compromised gain; the other strike, affecting 200 workers, was lost. Of the spontaneous strikes, three strikes, affecting 1,225 workers, were lost. Of the 2 strikes led by the independent unions, 1 strike, involving 600 wage earners, resulted in wage gains, while the other strike, involving 2,000 workers, was lost. For the 3 strikes classed under "unknown leadership", 2 led to gains in wages, while the result of the third strike could not be traced.

TAKEN FROM SURVEY OF CALIFORNIA ECONOMIC CONDITIONS

There are no official data on agricultural employment and agricultural wages in California, although the role of agricultural labor in the State's agricultural economy is of the greatest importance. California leads all the States in the Union in the percentage of agricultural wage earners to the total number of gainfully employed population in agriculture. The percentage of farm wage workers to the total agricultural population, 10 years of age and over, gainfully employed, was 56.4 percent in 1930. According to the 1930 census, of the total

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agricultural population in California of 334,241, classified as "gainfully employed", 188,678, or 56.4 percent, represented agricultural wage earners.

The important role played by farm wage labor in California's agriculture is further attested by the large number of farms reporting the use of hired labor and by the total amount of money spent in California on farm wages, both of which are proportionately largest in the country.

Because the major California crops are of the perishable kind, the State's agriculture depends upon a large and mobile supply of casual labor, especially at the harvest peaks. Seasonal succession of crops has naturally tended to build up a large migratory labor reserve army, drifting from one crop to another, from crop peek to crop peek, every month of the year. But despite the continuous succession of crops, a large number of agricultural workers spend a considerable part of the winter season in the cities, so that their earnings from agricultural work is limited at best to only a few months of the year. The decline in the demand for agricultural labor during the depression and the fact that many of the city unemployed seek work in the agricultural fields, together with the large influx of itinerant workers into California from other States during the depression, has tended to reduce the income of agricultural labor in California very markedly. One example will suffice to indicate what happened in this connection.

According to the records of the State reemployment office at Bakersfield, cotton-picking prices for 100 pounds for first picking were $1.50 in 1929, 75 cents in 1930, 50 cents in 1931, and 40 cents in 1932. In 1933 when the strike broke out the prevailing wage for harvesting was 15 cents per hour, being in some cases as low as 10 and 12 cents per hour. At the present time the average wage for harvesting is around 20 or 25 cents per hour.

The major part of the social aspects of the agricultural problem in California is related directly to the peculiar character of California's agriculture. The small-scale subsistence farming, which is still the predominant type of farming in many sections of the United States, plays only a minor role in California's agriculture. Instead, the "factory-farm", with all that the term implies, dominates the agricultural system of the State. The "factory-farm" in point of organization and management resembles more the city factory than the old-type farm. Such farms are often operated by absentee owners through a manager, with general policies decided not on the farm, but in the city. Such farms hire not one or two workers during the busy season, but hundreds and even thousands of workers. It is estimated that California has about 37 percent of all the large-scale farms in the United States—that is, farms having an annual crop value of $30,000 and over. True enough, from the point of view of numbers, the small farms overshadow the large farms. Thus, of the 135,676 farms in California (1930 census) 37.5 percent were in the up-to-20-acre class; 25.8 percent were in the 20-to-49-acre class, while the farms in the 500-999-acre class and farms in the 100 acres and over class accounted respectively for 4.3 percent and 4.2 percent of the total number of farms in the State. However, from the point of view of total acreage the picture of the relative position of farm groups is quite different. If we segregate all farms into two categories, those up to 500 acres, and those from 500 acres and up, the distribution of all land in farms in 1930 was as follows: Of the total acreage (land in farms) 72.7 percent of all farms (125,761) in the up-to-500 class accounted for 7,756,855 acres, or 25 percent of the total amount of all land in farm. On the other hand, 7.3 percent (9,911) of all farms in the class of 500 acres and over, accounted for 22,685,000 acres, or 74.5 percent of all land in farms. This grouping, although rough, indicates the preponderance of the large farms as to the amount of land controlled.

Even if we group all farms on the basis of crop land harvested in 1929 into the same two categories, we find that the 72.7 percent of all farms in California accounted for 57.2 percent of the total crop land harvested, while 7.3 percent of farms for the same year harvested 36 percent of all crop land harvested.

ECONOMIC POSITION OF CALIFORNIA AGRICULTURE

The importance of agriculture in the economic life of California may be judged by the fact that in 1929 agricultural income represented 30.6 percent of the total basic income from production, which was $2,664,732,000, and which was distributed as follows:

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	Percent
Manufacture	48.6
Agriculture	30.6
Mining	17.9
Lumbering	2.4
Fishing	.5
Total	100.0

The most recent official data relating to gross income from farm production by States, released by the United States Department of Agriculture in 1931, places California first among all the States of the Union in respect to the gross income received from the sale of crops, livestock, and livestock products. Comparing the actual farm value of each State in 1931, on the basis of 75 crops grown in the United States, California exceeded Texas by approximately 4 percent and the State of Iowa by 29 percent.

California's share in the production of field crops in the United States in terms of value is relatively small, about 2.7 percent, although the State is among the leading producers of several specific crops, such as beans, hops, rice, sugar-beets, and barley. In fruits and nuts, and in vegetable crops, California is by far the outstanding producer in the United States. Taking 1932, the percentage of California fruit and nut crop production to the United States total ranged from 44 percent for plums and prunes to 100 percent for lemons, olives, figs, almonds, and nuts. In the vegetable crops the percentage of California production to the United States total ranged from 12 percent for tomatoes to 100 percent for artichokes.

THE EFFECT OF DEPRESSION ON AGRICULTURAL INCOME IN CALIFORNIA

In California, as elsewhere in the United States, agricultural production did not show marked decline during the years of depression, the value of California's agricultural production, and therefore, the farmers' income, declined steadily from 1929 to 1932, a decline from $762,479,000 in 1929 to $371,965,000 in 1932. This decline was the inevitable result of the declining prices for agricultural farm products. The monthly average index of farm prices in California for all products declined from 136.5 in 1929 to 69.8 in 1932.

After a 3-year period of steady decline, the value of California farm products increased during 1933 and exceeded the 1932 total by $36,430,000 or 9.8 percent, with the largest increase taking place in the fruit crop (19.5 percent) and field crops (30 percent). The income from vegetable crops and from livestock and products, however, declined respectively by 8.2 percent and 3.3 percent.

The general improvement in agriculture in 1933 may be traced directly to Government efforts. In this connection, the introduction of a new form of production and marketing control under the Agricultural Adjustment Act has been of total significance in raising the level of agricultural prices of those commodities for which agreements were established. It was therefore not accidental that the largest gains in price registered by individual commodities which were affected directly by the Agricultural Adjustment Administration agreements, such as clingstone peaches and cotton.

Another contributing cause for the increased returns for California farm products in 1933 was the upward movement of wholesale commodity prices in the latter part of 1933. Wholesale commodity prices (United States as a whole) during the depression were declining until February 1933, when they reached the lowest level since the first part of the twentieth century. But during the few months period ended in December 1933 the price index of 784 commodities compiled by the United States Bureau of Labor Statistics rose 18.5 percent, which was the most extensive upward movement since the World War inflation period. The class of commodities most important to California, namely, farm products, showed the largest gain, having increased 35.8 percent. Among commodities showing the largest gains were: cotton, oranges, peaches, prunes, raisins (Thompson).

AGRICULTURAL OUTLOOK FOR 1934

Agricultural prospects for the year show rather mixed trends. Decreases in acreage have been reported for a number of crops, due partly to the Agricultural Adjustment Administration agreements and partly to drought conditions in the

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southern part of the State, which incidentally has caused an increase in pumping ranging from 15 to 30 percent.

For field crops, the official June 1 estimate of wheat production in California for the year is 9,008,000 bushels, compared to 12,118,000 bushels last year. Barley crop for this year, estimated at 630,000 tons, is lower than the average for the past 5 years, which was 669,000 tons, while the hay crop this year is rated at 78 percent of the "normal", and 85 percent of the past 5-year average.

The orchard crops this year show the following variations: Compared with last year grapes, prunes, walnuts, and figs indicate an increase in production; the production of peaches, pears, apples, almonds, and olives shows moderate decreases as compared with last year; while apricots and cherries show drastic decreases in production.

Specialty crops this year, because of higher prices and moderate supplies, show net returns above last year, although the harvesting of these crops does not require labor in a volume sufficient to affect agricultural unemployment.

Citrus fruit in southern California has experienced a serious early drop and from present indications, according to reports from the South, the output next season will not be more than 50 percent of the average.

Nineteen hundred and thirty-four agricultural price trends have thus far been anything but even. The California farm price index in February 1934 was 74.8 percent of the July 1910-June 1915 average—an increase of 29.2 percent over February 1933 and 32.4 percent over the all-time low of April 1932. In April the index of prices stood at 68.4 percent of the July 1910-June 1915 average, which was the lowest point reached this year and was a decrease of 8.6 points, or 11.2 percent from the index for March 1934 but was still 21.1 percent above April 1933.

In May 1934 the index was 77.8 of the July 1910–June 1915 average, an increase of 9.4 points or 13.7 percent over the index for April 1934, 23.3 percent above the April 1933 index, and 37.7 percent higher than the all-time low in April 1933.

The Effect of the Depression on Agricultural Income in California

As is well known, the postwar period was marked by a pronounced decrease of agricultural prices in the country as a whole. The estimates gross income from farm production declined from the highest total of $16,935,000,000 in 1919 to $9,944,000,000 in 1922. From 1923 to 1929 the annual estimates gross income from farm production continued on an even keel, around $11,500,000,000. The decline of agricultural prices, however, was greater than the data on gross income from farm production would indicate, since the volume of production of agricultural commodities from 1919 to 1929 was steadily increasing, as the table below shows:

Index of the volume of net agricultural production

1919–27	100	1927	106
1919	91	1928	111
1926	111	1929	109

Since 1929 the volume of production, despite a precipitous drop in agricultural prices, did not decline materially, the index being 107 for 1930 and 111 for 1931. But while production of agricultural commodities kept up to the predepression level, the gross income from farm production during the depression declined very markedly, from $11,911,000,000 in 1929 to $9,347,000,000 in 1930, and to $6,920,000,000 in 1931. (See United States Statistical Abstract, 1932, p. 601.)

In California also, agricultural production did not show marked decline during the years of depression. If we take some of the more important field crops of the State, we see that production tended to remain pretty much as it was before the depression years.

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	1929	1930	[1] 1931
Sugar beet.....tons..	545	768	1,060
Cotton.....500-pound bales..	280	284	177
Potatoes.....1,000 bushels..	6,765	6,930	6,625
Corn.....do....	2,460	2,700	2,610
Wheat.....do....	11,014	12,136	6,475

[1] Source: United States Statistical Abstract, 1933, pp. 601–645.

From 1929 to 1933 the value of California's agricultural production, and therefore the farmer's income, has been declining steadily, as the following data on the total farm income in California shows.

Total farm income in California [1]

1929	$762,479,000
1930	615,682,000
1931	468,210,000
1932	371,965,000

This decline in the total agricultural income was the inevitable result of the declining agricultural prices for California farm products. This is seen in the following average monthly index of farm prices in California.

Monthly average index of farm prices in California for all products [2]

	Percent
1929	136.5
1930	139.5
1931	84.7
1932	69.8

The diminution of the State's agricultural income has been occasioned almost wholly by declining prices rather than decreased production, as the above data clearly indicate.

Confronted with a reduced income for his crop, the California farmer was forced to reduce his operating expenses, and this was achieved to an appreciable degree. Like in all other industries, the cost of production in agriculture is distributed between the operating expenses, such as labor, fuel, etc., and fixed charges, such as interest payment, irrigation cost, power cost, and so on.

Despite the depression and number of these costs, mainly the so-called "fixed costs", remained practically the same as in the predepression period. This, for example, was true of the power charges for irrigation and other purposes, of agricultural machinery, and interest payments. None of these elements of cost are under farmer's control and he, therefore, had to accept them as they were if he was to stay in business. The only cost that could be changed without much difficulty was the labor cost, and the farmer naturally took advantage of the fact as a means of reducing his costs in the face of declining prices. The shifting of the burden of depression on the agricultural laborer was the road of least resistance, and the ability of many farmers to survive during the trying years was due directly to the large reductions made in the wages of agricultural labor. One example will suffice to indicate what happened in this connection. According to the records of the State employment office at Bakersfield, cotton-picking price for 100 pounds was as follows:

Year	First picking	Second picking	Snapping
1929	$1.50	$2.00	$1.00
1930	.75	1.00	.60
1931	.50	.65	.40
1932	.40	.50	.35

[1] Source: California Journal of Development, State Chamber of Commerce, January 1934.
[2] Source: Giannini Foundation of Agricultural Economics. University of California.

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As an average picker can pick approximately 200 pounds per day, the daily earning of the cotton picker in 1929 was $3 and in 1932 was only 80 cents, a decrease of $2.20 or 73⅓ percent. So that the income of the farmer was greatly reduced during 1930, 1931, and 1932; it was the worker's income that suffered most phenomenally during this period.

AGRICULTURAL IMPROVEMENT IN 1933

After declining steadily for 3 years, the value of California's agricultural production increased during 1933 and exceeded the 1932 total by $36,450,000, or 9.8 percent, although it was still considerably below the 1926–29 average. The total farm income in California in 1933 was $408,395,000, as against $371,965,000 in 1932, while the 1926–32 average was $613,263,000. So that while the total agricultural income in 1933 exceeded the 1932 income by 9.8 percent, it was still 33.4 percent below the 1926–32 average.[1] The following table compares the agricultural income of 1933 with that of 1932.

Agricultural income of California[1] *(value at the farm)*

Crop	1933	Percent increase or decrease (−)	
		1932	1933–32
Fruit crop	$128, 124, 000	$107, 225, 000	19. 5
Field crops	106, 330, 000	81, 775, 000	30. 0
Vegetable crops	54, 941, 000	59, 847, 000	−8. 2
Total crops	289, 395, 000	248, 847, 000	16. 3
Livestock and products	119, 000, 000	123, 118, 000	−3. 3
Total income	408, 395, 000	371, 965, 000	9. 8

[1] Source: California Journal of Development, January 1934.

The general improvement in agriculture in 1933 may be traced directly to Government efforts. In this connection the introduction of a new form of production and marketing control under the Agricultural Adjustment Act, passed by Congress in May 1923, has been of vital significance in raising the level of agricultural prices of those commodities for which agreements were established. Agreements affecting production and marketing have been drawn already for many crops, such as clingstone peaches, rice, oranges, grapefruit; while growers of cotton and wheat have benefited from the appreciable rise in the price of commodities which was due, at least in part, to the crop-reduction efforts of the Agricultural Adjustment Act. It was, therefore, not accidental that the largest gains in prices registered by individual commodities were those commodities which were affected directly by the Agricultural Adjustment Act agreements, such as clingstone peaches, which was the only fruit for which a control agreement was completed in time to affect 1933 production and prices, and cotton.

A comparison of the farm value of California crops and crop production for 1932 and 1933 shows that the increase in farm income for crops was due largely to increasing of prices for agricultural crops in 1933 as compared with 1932.

Farm value of crops and crop production in California, 1932 and 1933[1]

Crop	Farm value		Percentage change 1933–1932	Crop production in tons		Percentage change 1933–1932
	1933	1932		1933	1932	
Fruit and nut	$128, 124, 000	$107, 225, 000	19. 5	4, 074, 566	3, 979, 286	2. 4
Field crops	106, 330, 000	81, 775, 000	30	7, 503, 692	8, 047, 654	−6. 8
Vegetables	54, 941, 000	59, 847, 000	−8. 2	438, 260	486, 860	−10
All crops	289, 395, 000	248, 395, 000	16. 3			

[1] Source.

[1] Source: California Journal of Development, State Chamber of Commerce, January 1934.

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As the above table shows, the harvested production of the 1933 California fruit and nut crop was 2.4 percent larger than in 1932, while the farm value for the group was 19.5 percent greater in 1933 than in 1932. In other words, for approximately the same amount crop the fruit and nut growers in California received $20,899,000 more for the sale of their products in 1933 than in the previous year.

In the fruit group the most outstanding improvement in 1933, as compared with 1932, was in the peach industry. The total earnings for peach growers in 1933 amounted to $9,869,000 which was 147 percent above the farm value for the whole peach crop in 1932. This increase was due to the fact that the average price of both clingstone and freestone peaches in 1933 was almost double that of 1932, while for clingstone peaches alone, which came under the Agricultural Adjustment Act agreement, the aggregate earnings in 1933 were more than triple those of 1932, with approximately $5,731,000 being paid to growers.

The next fruit crop to register a substantial increase in 1933 as compared with 1932 was the grape crop. Profiting by the repeal of prohibition, California grape growers received $25,000,000 for their crop in 1933, as compared to $20,785,000 in 1932, or 20.5 percent more. The mean average price per ton to the grower for all grapes produced in California was $16.10 in 1933 as compared to $11.72 per ton in 1932; the largest gain in prices was for wine grapes, the price per ton in 1933 averaging $19.75 as against $12 per ton in 1932.

In the field crops, although production in terms of tonnage declined by 6.8 percent in 1933 compared to 1932, the farm value of field crops in 1933 amounted to $106,330,000, which was an increase of approximately $24,555,000, or 30 percent over 1932. Here the most pronounced gain was registered by the cotton industry, as the following tabulation shows:

Year	Production		Farm value [1]	
	Cotton (bales)	Cottonseed (tons)	Cotton	Cottonseed
1933	216,000	94,300	$11,124,000	$1,273,000
1932	129,371	61,900	4,386,000	665,000
1931	176,580	84,500	5,738,000	1,065,000

[1] Source

The total value of cotton and cottonseed in 1933 was $12,397,000 as against $5,051,000 in 1932, or 145 percent above the 1932 figure. That the increase was not due to the increased production alone, but also to the increase in the price of cotton and cottonseed received by the farmer is clear from the data on unit prices, as the following tabulation shows:

Year	Farm prices	
	Cotton per pound in cents	Cottonseed per ton in dollars
1933	10.3	$13.50
1932	6.8	10.75
1931	6.5	12.60

In 1933 the price of cotton was thus 51.4 percent above 1932, while the price of cottonseed per ton brought the farmer 25.5 percent more in 1933 than in 1932.

Among the other field crops in California which showed substantial gains in 1933 as compared with 1932 was the sugar-beet crop. In 1933 the sugar-beet crop gave sugar-beet growers $12,544,000 as against $8,528,000 in 1932, or 42.6 percent more, although the 1933 crop was only slightly above the 1932 crop.

Truck crops, however, showed a decline both in acreage planted and in total farm value in 1933, as compared with 1932. The amount of vegetables planted

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decreased by 10 percent and the total value of truck crops decreased by 8.2 percent.

Among the few exceptions to the general decline in prices of vegetables in 1933 were the summer and fall lettuce. The total farm value for summer and fall lettuce in 1933 was $7,723,000 compared to $6,518,000 in 1932, an increase of $1,205,000, or 18.4 percent. At the same time the price of summer lettuce per crate was $1.88 as compared to $1.25 in 1932, while the price of fall lettuce for the same period increased from $1.26 in 1932 to $1.50 in 1933. The increase in the total returns to the farmers for summer and fall lettuce took place despite the smaller production of summer and fall lettuce in 1933 as compared with 1932. The 1933 production amounted to 4,818,000 crates and the 1932 production amounted to 5,191,000 crates; so that while production in 1933 was 7 percent below the 1932 production, the farmers received 18.4 percent more for their crop in 1933 than in 1932. (See Bank of America publication for data on production and value.)

The following table shows the value of leading agricultural crops of California for 1933 and 1932, together with percent increase or decrease.

Value of leading agricultural crops of California

Crop	Value at the farm		Percent increase (+) or decrease (−)
	1933	1932	
Oranges	$33,827,000	$38,390,000	−11.8
Hay	31,102,000	33,448,000	−7.0
Grapes (all)	26,000,000	20,765,000	+20.5
Lettuce (all)	15,499,000	16,170,000	−4.5
Prunes	14,400,000	9,240,000	+56.1
Lemons	14,280,000	14,102,000	+1.1
Sugar beets	12,544,000	8,528,000	+42.6
Cotton and cottonseed	12,397,000	5,051,000	+145.0
Beans	12,320,000	7,079,000	+74.0
Barley	10,278,000	9,812,000	+4.8
Peaches	9,889,000	4,007,000	+146.8
Wheat	8,361,000	6,008,000	+37.6
Apricots	7,247,000	4,549,000	+59.5
Potatoes	6,525,000	4,217,000	+54.8
Asparagus	6,475,000	6,667,000	−2.9
Walnuts	6,464,000	6,827,000	−26.8
Cantaloupes	5,441,000	6,831,000	−20.3

The improvement of the economic conditions of California agriculture in 1933, as compared to 1932 is also indicated by the rise in the whole prices in 1933, a rise in which a number of California farm products were favorably affected.

Wholesale commodity prices during the depression were declining until February 1933 when they reached the lowest level since the first part of the twentieth century. However, during the few months period ended in December 1933 the price index of 784 commodities compiled by the United States Bureau of Labor Statistics rose 18.5 percent. This was the most extensive upward movement since the World War inflation. The class of commodities most important to California, namely, farm products, showed the largest gain, increasing 35.8 percent. Among the commodities showing the largest gains were: cotton, oranges, peaches, prunes, raisins (Thompson).

CHRONOLOGICAL SUMMARY OF COTTON PICKERS STRIKE, SAN JOAQUIN VALLEY, CALIF.—KERN, KINGS, TULARE, AND MADERA COUNTIES—FROM OCTOBER 1 TO OCTOBER 30, 1933, INCLUDING NOTICES BEGINNING SEPTEMBER 18.

(Ex: San Francisco News, San Francisco Chronicle, San Francisco Examiner, San Francisco Call Bulletin, Stockton Independent, Oakland Tribune, Oakland Post Inquirer, Fresno Bee, Tulare Times, Tulare Advance Register, Los Angeles Times, Los Angeles Daily News, Western Worker.)

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SEPTEMBER 18

Tulare: Cannery and Agricultural Workers Industrial Union announce cotton strike involving thousands of Mexican, Negro, white workers (men, women, and children), would be called within 10 days unless demands of $1 per hundredweight for picking is paid, instead of present 50-cent rate. (See Oct. 2 other demands.)

SEPTEMBER 23

Fresno: Over 300 growers offer 60 cents per hundredweight—compares with 40 cents, 1932.

OCTOBER 2

Tulare: General strike set for Wednesday October 4 by conference of 25 locals of Cannery and Agricultural Workers Industrial Union (4,000 organized workers, acreage over 100,000). Ten workers arrested at Wasco. Eight hundred already out at Bakersfield, Earlimart, Lerdo, Corcoran. Strike to begin in Southern regions; to sweep North as crop ripens. Small farmers organizing United Farmers League locals: willing to grant pickers' demands; uniting with pickers in fight against Finance Corporation. American Federation of Labor Building Trades Council at Visalia pledges support. (See Oct. 9 counter action State American Federation of Labor.) Additional demands of strikers include recognition of Cannery and Agricultural Workers Industrial Union no discrimination against workers for strike activity. Cannery and Agricultural Workers Industrial Union reports locals in 21 towns; others being organized daily. Unemployed being organized not to scab but to help strikers.

OCTOBER 3

Tulare: 1,000 on strike; 5,000 threaten walkout tomorrow.

OCTOBER 6

Fresno: Growers start organization against demands for increased pay; Kern County growers form Agricultural Protective League (vigilantes); Rabbi I. F. Reichert makes public letter to Governor Rolph stating "In the great majority of clashes between the peace officers and the strikers, the former were responsible for inciting to violence."

OCTOBER 7

Fresno: Ranchers in Corcoran District arm themselves. Strike grows more intense. Strikers arrested: Frank Lopez, Louis Bradley, and 3 others, on vagrancy charge after conducting pickers' strike meeting. Mediation offered by State Labor Commissioner Frank C. MacDonald. Growers (San Joaquin Labor Bureau) refuse.

Kern County, Fresno: Growers increasing organization to "Drive strike agitators out." MacDonald says refusal to mediate is unjustifiable and tends to encourage communism. Strikers have not yet replied to mediation offer. Growers order pickers to vacate picking camps. Evicted pickers camp in vacant lots; hundreds forced from camps.

OCTOBER 9

Kern County, Arvin: Growers accused of boycott threat and "starvation" plot (accused by State Labor Commission). Pickets in valley strike invade fields; defy ouster. Cotton strike peace fails; clash feared. Rabbi Reichert declares employers' treatment of men outrageous. (All newspapers; 7–8 column, front page headlines.)

Woodville strikers resume picketing (Vigilantes). Farmers threaten to disband picket lines by force. County highway patrolmen and sheriff's deputies mobilized. Three counties strike spreads over Tulare, Kings, and Kern Counties, all demand $1 a hundredweight; 10,000 now out. Growers declare "We can't pay a cent more than 60 cents." Vigilantes keynote: Direct action against strikers.

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Woodville (7–8 column front page headlines): Vigilantes raid strike meet. Violence breaks out in four counties; cotton area arms. Authorities advise farmers to use force against agitators.

The meeting last night of 800 striking pickers and small farmers called to unite in fight against finance corporation was attacked by 60 drunken vigilantes, and resulted in pitched battle. Vigilantes were armed but could not break through workers defense to reach speakers.

Four counties: Strikers prepare to strengthen picket lines; pickets instructed not to start trouble but to resist attempts to drive pickets from field. Increase picket lines despite terror.

American Federation of Labor (State): Announces it is not participating in cotton strike because pickers are not affiliated with labor unions.

Corcoran: 1,000 vigilantes streamed from Bakersfield en route for Corcoran to mobilize against strikers.

Kern County: 200 strikers' families ousted from cottages; small belongings dumped on road by vigilantes.

Strikers make demands on board of supervisors: (1) For immediate relief for cotton pickers and unemployed; (2) hot lunches for children of strikers and unemployed; (3) removal of guards from cotton fields; (4) recognition of their right to picket.

Monterey: Mexican Consul Bravo protests against reported mistreatment of "his" nationals.

Bakersfield: 1,000 strikers parade, demanding release of arrested workers and insist on demands put to board of supervisors. Marchers force release of two strikers arrested during demonstration.

Hanford: Sheriff, district attorney threatens strikers with shooting and castor oil.

Tulare, Kern County: Strikers mobilize 100 percent and pull out 12 cotton gins.

Three counties: Cannery Agricultural Workers Industrial Union secures lots from sympathetic farmers to house evicted strikers.

Madera County: Union organizers arrested.

Visali: Cannery Agricultural Workers Industrial Union preparing to pull out pickers as soon as crop ripens.

Kern Lake Bed: 1,500 pickers held prisoners but refuse to pick cotton.

Three counties: Wasco, McFarland, Corcoran, Arvin, Shafter, Kern Lake Bed, Pixley, Delano, Fresno, Bakersfield, and dozens other towns in strike; 80–90–100 percent pickers out on strike.

Spirit is high; relief and defense committees set up. Strikers wear Cannery Agricultural Workers Industrial Union cards in caps and shirts; workers and merchants of towns in sympathy with strike.

Bakersfield: 700 join Cannery Agricultural Workers Industrial Union local.

Pixley: Ten strikers arrested for "disturbing the peace."

Corcoran: Offer by several big growers to compromise at 70 cents was rejected at strikers mass meeting.

OCTOBER 10

Tulare: N. R. A. compliance board steps in; attempts today to settle strike; Timothy A. Reardon, State director of industrial relations, ordered to intervene by Governor Rolph. State director of relief (N. C. Branion) announces strikers and families will be fed by counties receiving Federal and State unemployment relief. (Strikers report relief offered only if strikers sign card promising to return to work.)

Three counties: Strikers demand Government relief be distributed through union relief committees. Refuse relief on proviso that they will return to work pending arbitration of strike.

Corcoran: 2,500 pickers and families, including 500 children evicted; establish tent city in field. (October 13 number increased to over 4,000; by end of strike was 5,000.)

Three counties: Growers still reject mediation. Rabbi Reichert threatens growers with "out of funds from farm relief board."

Arvin: Two strikers killed by surprise attack of ranchers.

Wasco: Growers attempt to get scabs; many going in are being called off by pickets.

Corcoran: Four picketing strikers arrested for "disturbing the peace."

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Pixley: Two strikers arrested for "disturbing peace." Strikers hold protest meetings against arrests. Vigilantes announce Farmers Protective Association has 700 members, purpose to increase to 2,000.

Hanford: Chamber of commerce commends growers in letter for their "spirit of firmness" against strikers and attacks communistic influence among strike leaders.

Tulare: Defense committees of strikers strengthened.

Kern County: Over 600 strikers march through several towns with banners; "Hold the Line", "Hot lunches for our children", "Negro and white, unite in fight."

Corcoran: Growers hold meeting to plan "drastic action."

Three counties: 12,000 strikers now out.

Kings County: Growers adamant; declare will employ no one at any price; "let the cotton rot on the ground."

OCTOBER 11

Pixley: 15,000 now out on strike; several hundred strikers meet to protest arrest of 17 pickets; armed vigilantes drive up in autos and open fire.

Headlines: 2 killed (2 strikers); score wounded and hurt, strikers, unarmed, fight back; vigilantes behind autos continue sniping and then drive off.; 5 farmers, vigilantes, arrested, accused of murder; warrants out for 5 more. National Committee for Defense of Political Prisoners urge Governor Rolph take immediate action to suppress violence of police and vigilantes in cotton strike area. Strikers' committee, including Pat Chambers and eye witnesses at killings, demand hearing from Rolph 3 p. m. next day (12th). Sheriff Hill appeals for National Guard to be sent in.

Visalia: Thousands of workers mass to protest killings and demand vigilantes be prosecuted for murder. Strike situation tense, fever heat, strikers incensed at murder; maintain discipline ranks.

Arvin: 1 striker killed; armed growers ride into picket line; 6 other strikers injured.

Arvin (at another point of picket line): 1 striker shot to death; several wounded as sheriff's posse hurl tear-gas bombs into picket lines; 2 strikers arrested on charge of murder, warrants out for 6 more for disturbing the peace; affidavits filed by witnesses, that killed striker (Subia) was shot 11 times, and it was only after delay that officers permitted strikers to claim body. Frick, head of vigilantes' San Joaquin Labor Bureau, and others attempt to break picket line; are beaten by strikers; another grower threatened to shoot is also beaten; 8 strike leaders arrested for disturbing the peace.

Four Counties: I. L. D. organizing defense for arrested strikers.

Tulare County: Mexican vice consul arrives to "Protect interests of Mexicans." Urges strikers return to work pending arbitration.

Corcoran: Baby dies: 3-months-old Jennie Roque, striker's baby, dies of malnutrition and exposure.

Four Counties: Crop possible loss estimated by ranchers at about 60,000 bales from 80,000 acres, valued at approximately $3,300,000. Other estimates run as high as $50,000,000.

All newspapers front-page editorials: "Stop the war." "Save the Crops." "For Meditation." etc.

Corcoran: Growers' ranks split on policy; growers threaten import scabs from Texas.

Woodville: Growers show some disposition to mediate.

Kings County: Growers issue statement; they would let cotton "Dry up and rot" before they would accept strikers' demand; threaten to "starve out" strikers. Growers' vigilantes' "Farmers Protective Association" publish ad: "We, the farmers of your community, upon whom you depend for support, feel you have nursed too long the viper at your door. The communistic agitators must be driven from towns by you, and your harboring them further will prove to us your noncooperation with us and make it necessary for us to give our support and trade to another town that will support and cooperate with us."

OCTOBER 12

Four counties: (7–8 column 15,000 strikers out: "Starve out strikers" plan mapped out by meeting of planters, supervisors, district attorney, sheriff, and Visalia chief of police.

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Picket lines: Strikers prepare to picket more than 300 ranches in morning, women in front lines; answer terror with organization.

McFarland: Striker shot and wounded by cotton gin bookkeeper.

Visalia: 1,000 strikers meet to insist on demands of: (1) Death penalty for 11 vigilantes guilty of murder; (2) demand $5,000 county relief to be distributed through strikers committees of the Cannery and Agricultural Workers Industrial Union. (3) Release arrested strikers. (4) Indemnities for families of slain strikers. (5) Disarm vigilantes. (6) Or right to arm themselves as defense measure. Supervisors refuse $10,000 relief and indemnities to families of slain. County welfare workers instructed by State to furnish relief without reference to strike affiliation, etc. State mediators arrive; grand jury session called to indict Pixley and Arvin slayers; State highway patrol mobilized in greater numbers from all parts of State; strike committee demands bodies from coroner for mass demonstration funeral for these slain strikers.

Coroner refuses; says will give bodies to families. (See account of funeral Oct. 15.)

All newspaper editorials appear calling on Governor to settle strike.

EX SCTO.: Workers committee receives reply from Governor Rolph agreeing to hearing on murders of three at Pixley. National committee for defense of political prisoners receive reply from Governor Rolph stating he holds county authorities and district attorney responsible for law enforcement; willing to send fair minded arbitration in to settle strike. Geo. Creel, (N. R. A. head for California) ordered by Federal Government to intervene.

Tulare County: Pat. Chambers is jailed on criminal syndicalist charge (just before leaving for hearing in Sacramento); bail set at $2,000; raised to $10,000.

Four counties: Strike committee (organized at beginning of strike, of 30 strikers) continues direction of strike. Ten growers, two strikers now under arrest on murder charges. Seventeen strikers under arrest fo disturbing peace, each $1,000 bail.

Tulare County: Supervisors order sheriff to recruit large corps of deputies grants unlimited power to buy arms, tear gas bombs; calls in more State highway patrol; denies food or hospitalization to "transients." Strikers organizing with ILD to free 17 pickers held in jail. United States Labor Department, Department of Justice, Mexican consul, State labor commission, State highway patrol, converge to exert pressure for immediate settlement.

OCTOBER 13

Four counties: 18,000 strikers not out as strike spreads to Madera County. Ranchers claim strike broken. Governor Rolph predicts end 48 hours. Consul Bravo promises return to work of Mexican strikers pending arbitration.

Corcoran: 4,300 strikers cheer strike committee report to continue strike; reply with "Viva la Huelga", "Viva la $1 a hundred." Leory Gordon, strike leader, arrested on criminal syndicalism charge.

Sacramento: Strikers committee, at hearing before Rolph, protests murder of Pixley strikers and presents demands. (See p. 5, Oct. 21.)

Four counties: Preparations being made for mass funeral of slain strikers. (See Oct. 15.)

Corcoran: Hospitalization refused striking women about to become mothers.

Tulare County: Over 600 permits issued to carry concealed weapons; scores deputized by sheriff.

Kern County: One hundred additional deputies employed by sheriff Walber. State overrules counties and promises hospitalization to expectant mothers.

Corcoran: Health officials threaten eviction of strikers from camp. Strikers demand installation of additional sanitary facilities.

OCTOBER 14

Four headlines accuse strikers of arming with 400 rifles; eye witnesses declare no arms used by strikers.

Corcoran: Three more babies die, making four in 1 week, malnutrition.

Sacramento: Because state labor department was rejected as arbitration board, Governor Rolph appoints new board. Picket line striker (Collingsworth) arrested on suspicion of felony.

Arvin: Four strikers in addition to two. Andrews arrested for Subia's (striker) murder.

San Francisco, San Diego, Los Angeles, Sacramento, San Jose, etc.: Workers held protest meetings on Pixley and Alvin murders; raise funds for relief, pledge solidarity, support W. I. R., I. L. D. campaigns.

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OCTOBER 15

Tulare: Mass funeral; 5,000 men, women, children, striking pickers, town workers, and sympathizers converging from 75 miles around, mass at Tulare to attend mass red funeral of Dolores Hermande; slain striker (Pixley). Newspapers describe demonstration as "Most dramatic and colorful demonstration ever witnessed in the Valley"; "March organized with military precision"; "The memory of the tragedy behind them, tribute to the victory ahead." No armed State highway patrolmen on duty; many held in reserve. Mass meeting after funeral voices determination to go back and strengthen picket lines; mass picket lines organized for 9 a. m. next day; authorities threaten to call out State troops.

OCTOBER 16

Arvin: Seven Arvin striker defendants ordered by grand jury held on charge of murder, conspiracy to commit murder, and rioting and unlawful assembly. Six thousand strikers demonstrate outside jail, demanding freedom of seven strikers; then proceeded in mile-long parade to union hall and later to the cemetery; pledged unanimously to stay out till victory is won.

Four counties: Twenty-seven striking workers now in jail.

Visalia: Governor's fact-finding committee opens preliminary investigation to find basis for arbitration; attempts determine; (1) the picking wages that growers are able to pay; (2) the wage scale necessary to enable workers to maintain proper standard of living.

Pixley: Notice by governor, Mexican consul, and Federal consolidated posted in camps, urging strikers to return to work at old rate of 60 cents hundredweight pending final settlement by arbitration. Two thousand five hundred strikers denounce strike-breaking tactics and tear up poster.

Entire valley: Cotton ready for picking, growers facing loss; no cotton being picked.

Fresno and Tulare: Some growers agree to pay 75-cent rate.

Pixley-Corcoran: Some growers agree to pay 80-cent rate.

Visalia: Pat Chambers, speaking from jail, declares: "Communists, in our political party, are only ones fighting in the interests of the workers. The workers will not be misled by charges of 'communism'." The workers are answering this charge of "communism" by declaring that if their leaders in the union and the strike are Communists they are also Communists.

OCTOBER 17

Tulare: Indictments returned by grand jury against 16 strikers on charges of rioting and resisting officers.

Madera: Strikers' conference called to strengthen strike in Madera.

Tulare: Special meeting of central strike committee, under heavy workers' guard decides to remain on strike and intensify picketing while arbitration is going on. Workers still reject relief given on condition workers return to jobs at old rate.

Bakersfield: 2,000 strikers attend funeral of Subia (Arvin murdered striker), coming from all camps in area.

OCTOBER 18

Visalia: Federal Government threatens with war-time bull pen and deportation of "undesirables." Communists and agitators found not to be citizens.

San Diego, etc.: Corps of patrolmen from points as far south as San Diego mobilized for concentration in strike area.

Four Counties: Demonstration and daily mass meetings take place at all points.

Other California cities: Mass meetings of workers in many cities continue to raise relief.

San Francisco: Committee of liberals go to strike area to investigate.

Fresno County: Sheriff Overholt authorized by board of supervisors to employ additional 100 deputies.

Hanford: Another baby dies; malnutrition (fifth); Corcoran mothers refuse State relief milk because they would have to sign a card pledging return to the fields at old rate.

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Corcoran: Faced with formal eviction notice, strikers force authorities to give instructions to Government Departments for construction of additional sanitary facilities and water supply at strikers' camp; strikers refuse to move from camp.

Visalia: Fact-finding committee (Government) begins sessions today.

Tulare: Grand jury returns indictments against growers in Pixley murders. Pat Chambers indicted for criminal syndicalism by grand jury.

OCTOBER 18–19

Creel (N. R. A. head) visits and speaks to strikers in several camps. Meets with growers.

OCTOBER 19

Lindsay, Tulare County: Six strikers arrested for "disturbing the peace."

Pixley: Murder charges against six growers indicted by grand jury were dismissed today.

OCTOBER 20

Visalia: Chambers brought to hearing of fact-finding committee under sheriff's guard. Given ovation by workers. Growers dissatisfied with personnel of arbitration group. Sixth baby dies. Mexican woman striker dies of pneumonia.

OCTOBER 21–22

Corcoran: Five arrested strikers released on bond.

S. L. L. Camps: Abolition of pledge to return at old rate previously required in order to receive Government relief.

Fresno: School children pressed into service to pick cotton over the week end.

OCTOBER 21

Pixley–Tipton: Two growers agree to sign with the union at $1 per hundredweight; one grower refuses to hire scabs but finance company puts scabs in with protection of armed guards.

Kern County: Growers now offer 80 cents per hundredweight. Fact-finding committee decides that growers should pay 75 cents a hundredweight ("and that without question the civil rights of the strikers have been violated"). Hundreds of growers deputized by sheriffs and new reign of terror initiated against workers and to prevent small farmers from adopting compromise offer of mediation board.

OCTOBER 23

Kern County: Growers wire Washington that Mexicans be deported; the growers have lost confidence in State officials to mediate the strike; request a Federal mediator.

Tulare: Drivers of picket trucks arrested and workers left stranded in highway.

Hanford: Women and men pickets slash sacks used by scabs picking cotton on a ranch here.

OCTOBER 24

Tulare: Canning Agricultural Workers Industrial Union central strike committee in session taking up compromise proposals offered. Northern growers reject 75-cent proposal of mediation board. Southern growers offer 80 cents a hundredweight.

Pixley: Pickets, calling on scabs to stop picking and join strike, are routed with tear gas and charged by 200 patrolmen to break the line; 14 pickets arrested.

Visalia and Hanford: Two companies of National Guard awaiting orders to march into strike field, each equipped with 64 men, machine guns, and rifles.

Tulare County: Hospital full with sick strikers previously denied entrance.

Kings County: Sheriff requests troops be sent to valley.

Tulare County: Many scabs won over by pickets.

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OCTOBER 25

Tulare: Cannery and Agricultural Workers Industrial Union central strike committee offers agreement on 80-cent basis; (2) Recognition of Cannery and Agricultural Workers Industrial Union; (3) no discrimination in rehiring because of strike activity; (4) immediate and nonconditional release of Pat Chambers and all arrested strikers.

Tulare and Kings County: About 30 strikers now in jail. Many arrested on picket lines during past 2 days. Growers (San Joaquin Valley growers labor bureau) agrees to 75-cent scale. Strikers hold out for 80 cents and other demands stated.

Wasco: Six growers agree to 80-cent rate.

OCTOBER 26

Patrolmen from every part of State moved into strike area; sheriff deputies withdrawn.

Corcoran: Federal relief withdrawn; absolutely discontinued this morning. Camp ordered evicted. Workers refuse to move or go back to work at lower rate.

Tulare: San Joaquin Valley Agricultural Labor Bureau issued statement: "In order to salvage what is left of the cotton crop and in the interests of good American citizenship, law, and order and in order to forestall the spread of communism and radicalism and to protect the harvesting of other crops, we accede to the recommendation of the governor's fact-finding commission to increase the price of picking cotton to 75 cents per 100 pounds of seed cotton."

Merced County: 160 workers walk out on three ranches demanding 80-cent scale.

Four counties: Central strike committee canvassing growers to sign 80-cent scale.

Corcoran: Eviction ordered blocked.

Visalia: Pat Chambers up for hearing pleads not guilty to criminal syndicalism; trial set for November 21; motion to reduce bond from $10,000 denied.

Visalia and Corcoran: Mexican strikers telegraph Mexican Government protesting to Minister of War that they are being evicted from their camp.

OCTOBER 27

Four counties: Cannery and Agricultural Workers Industrial Union accepts compromise scale of 75 cents a cwt. Growers signing up workers through Cannery and Agricultural Workers Industrial Union. Workers called off ranches owned by growers who refuse to recognize union and sent to ranches that sign up. About 75 growers sign with the union by thirty-first.

OCTOBER 28–29

Four counties: Growers signing up with union; workers going back into the fields; some workers leaving for harvest of other crops.

Chronological Summary

Grape Strikes—California

AUGUST 21

All papers carry McDonald's statement that unless 25 cents an hour adopted by grape growers general strike of 5,000 grape pickers in Fresno region imminent.

AUGUST 22

Los Angeles Examiner of August 22 contained news item dated San Francisco August 21 to the effect that according to Commissioner McDonald all the major vineyardists had agreed to pay the 25 cents an hour scale and that the general strike will most likely not materialize.

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AUGUST 23

Fresno: Fred C. Huss, deputy labor commissioner, announces strike leaders promised not to attempt to call a general strike until a proposed code had been formulated and studied.

AUGUST 24–25

Agricultural Farm Labor Bureau of San Joaquin Valley announces a new wage averaging half a cent a day higher than the 1932 scale (on piece rate basis).

AUGUST 29

Tulare district: Huss and Bloch settled strike at Red Bank Property, Inc., near Visalia; strike affected 2,000; workers demanded 25 cents per hour against 15 cents. Pickers won 25 cents hour rate.

SEPTEMBER 5

Fresno: L. Bradley, of Cannery and Agricultural Workers Industrial Union announced at a mass meeting of 600 that a strike would be called unless growers agreed to pay 1 cent a day more than the schedule adopted by the San Joaquin Farm Labor Bureau. Strike to be handled same as peach strike picketing every ranch to discourage employment of strike breakers.

Fresno: Lillian Monroe and Robert White arrested for urging fruit pickers to strike. Both were released after being questioned by police.

SEPTEMBER 6

Cucamonga: A general strike of the Mexican grape pickers throughout the Cucamonga and Guasti district feared by growers. Vineyardists paying 20 cents an hour Cucamonga district.

Fresno County: Four hundred workers go on strike at Martin vineyard at Woodlake, demand 25 cents against 15 and 12½ cents. Deputy Huss sent to the scene.

Manning district: Eighteen pickers strike on the Ostler Bros. farm in the Manning district.

SEPTEMBER 7

Fresno County: Growers claim complete failure of the strike called among 6,000 grape pickers in the Fresno area. Reason given—higher rates prevailing on most ranches.

Selma: Picking operations stopped on several ranches in Selma district. Approximately 1,000 workers estimated on strike in Fresno County. Strike leaders claim 2,000.

Lodi: Six hundred growers held meeting, decided to pay 1½ cents per tray; workers demanding 2 to 4 cents.

SEPTEMBER 8

Biola, Fresno County: Near riot; general drive on strike agitators begins in Fresno County; 11 workers arrested; 4 charged with criminal syndicalism; to be defended by Bob White of the International Labor Defense; group of ranchers ask to be deputized to "clean up" the county overnight with a shotgun patrol (San Francisco Chronicle, Sept. 9).

SEPTEMBER 9

Tulare County: Six hundred workers hold parade under Cannery and Agricultural Workers Industrial Union auspices.

Fresno: L. Bradley, strike leader, and two others (A. Albas and M. Cortez) arrested. Bradley charged with "criminal syndicalism"; others with rioting. Additional arrests expected. Officers seek Lillian Monroe, alleged to have been involved at Biola riot. Herbert Williamson arrives Fresno to assist in restoring order. Huss already in the field.

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SEPTEMBER 10

Fresno: Number of arrested grows to 16. Officials express fear of "night terror"—say can control situation daytime but powerless at night. All involved in grape strike.

Tulare and Kings Counties: Huss attempting mediation; arranged to meet strike leaders of three counties on eleventh.

San Francisco: Two dozen tear-gas bombs sent from San Francisco municipal airport to Fresno at Sheriff Overholt's request.

Fresno: Two hundred workers parade in front of jail; grape growers again threaten to take matters into their own hands.

SEPTEMBER 11

Strikers' headquarters, Fresno, demand release of imprisoned workers preliminary to any settlement or mediation. Number of arrested 19, with warrants for 3 more arrests. Gigantic meeting of 3,500 workers in Fresno to continue strike, press demands.

SEPTEMBER 12

Picketing of San Joaquin Valley grape field to begin in earnest.

Fresno: Strike leaders claim 4,000 pickets will participate.

Kings: Leaders claim only 500 pickers working in three counties.

Tulare: Strike grows; heavy losses to vineyardists threaten.

San Bernardino: Grape growers adopted a wage scale for the season; the scale is 20 cents an hour for picking grapes for shipment, also for packinghouse workers. Want: Three cents a field box for grapes to be used in wineries; and 2 cents a big box for grapes picked for Los Angeles (San Bernardino Sunday, Sept. 13). Most of the grapes go to wineries. Meeting of growers announced for 13 at Lucas Ranch, Cucamonga. Pickers demand 25 cents an hour.

SEPTEMBER 13

Ontario, San Bernardino County: Meeting between growers and pickers held for 3 hours on Lucas Ranch. Deputy J. E. Benson, H. E. Torres, Mexican consul at San Bernardino, and Alvara Dominguez, consular attaché, present. No agreement reached. Spokesmen of strikers asked for 4 cents for crusher, 4 cents for shipping, 3½ cents for smaller lugs for crusher, or a rate of 25 cents an hour. Condition of things this year spokesman of workers said, and the nature of the crop would not assure them an average of 25 cents an hour unless they were paid on the 4-cent and 3½-cent rates. Dominguez denied workers influenced by agitators.

Fresno: Cannery and Agricultural Workers' Industrial Union bulletin announced meeting to decide whether to continue holding out for 2½ cents per lug scale. Union bulletin stated: "Our principal weakness has been that we had no proper organization before the strike. We were not organized properly into strike committees, relief committees, and defense committees at the very beginning of the strike. If our camps vote to continue the strike, every striker must do his share. There's no use striking if the crop is being picked. We are not faced with the duty of defending our arrested comrades in jail. The central strike committee feels that every local and camp should immediately elect a defense committee and begin their collection of funds to be turned over for defense."

Selma: Police officers concentrate in Selma district to run out, arrest strikers (agitators). Rubin Rodriguez jailed on charges of "criminal syndicalism."

San Bernardino: Antonio Guasti Vineyard Co. acceded workers' demands for 25 cents.

SEPTEMBER 13

Lodi: Several hundred fruit workers hold meeting, ask 50 cents per hour.

SEPTEMBER 14

Tulare County: Ticketing activities spreads to Tulare County with possibility of general walkout.

San Bernardino: One hundred and sixty Mexican workers returned to work for the Italian Vineyard Co. at their own terms.

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Fresno: Committeemen representing Cannery and Agricultural Workers' Industrial Union announce they have voted to call off grape-picker strike efforts and claiming victory in some instances where ranchers signed contracts to pay a base wage of 2 cents a tray. Efforts to be concentrated on defense of arrested workers.

Modesto, Stanislaus County: Modesto farmers' and workers' N. R. A. union met and adopted a scale of 30 cents an hour for all farm work. Scale for picking and spreading seedless Thompson was set at 2 cents a tray. Other scales were:

	Cents
50 pounds lug wine grapes	5
40 pounds lug wine grapes	4
Los Angeles lug wine grapes	4
50 pounds lug seedless Thompsons for dehydrators	3½

SEPTEMBER 16

Merced County: Thirty-five grape pickers went on strike near Atwater, refusing to accept 20 cents an hour.

SEPTEMBER 18

Merced County: Atwater strikers return to work at 25-cent rate.

Turlock: N. R. A. farmers workers' union adopted wage scale of 30 cents per hour, in conformity with N. R. A. Union of Modesto.

SEPTEMBER 21

Stockton: Thirty workers struck on S. Freedman ranch, 3 miles from Modesto. Demands granted the same day, 30 cents instead of 25.

Cucamonga: Strike terminated with most employers conceding to the demands of pickers. Average wage boosted to around 25 cents per hour (spontaneous strike).

SPETEMBER 26

Lodi: Cannery and Agricultural Workers International Union called strike in Lodi, demanding raise from 25 cents per hour to 40 cents, 8-hour day, and one-half time for overtime, and abolition of contract system.

SEPTEMBER 27

Fresno: The last of criminal syndicalism charges resulting from grape strike dismissed.

Lodi: Grape strike called. Policy to concentrate on strategic ranches—3 key vineyards (about 150 vineyards affected by strike). Seven hundred men at meeting in which strike leaders call for unified action.

Hanford: Ninety grape pickers strike on Morgan, Banner, and Taylor vineyards 3 miles north of Hanford, because cut from 25 cents to 20 cents per hour. Went back to work on twenty-ninth at reduced scale.

SEPTEMBER 28

Lodi: Three hundred strikers engaged in picketing, estimates of strikers run as high as 700 pickets patrol four "key" vineyards. Lodi Sentinel, in an editorial of September 28, states: "The wisest action these agitators could take would be to leave the vicinity of Lodi and allow honest, willing workers to do their part in keeping themselves clothed and fed." Seventy special deputies, principally vineyard owners, were sworn in. Walter Garrison named leader. Action taken to "safeguard property", arrests expected to be made on "peace disturbance" charges. Later number of deputies increased to 104. Addressing deputies Garrison said: "I am not going to ask any of you to do anything I would not do myself. I want 1 car of 2 deputies to follow each car of pickets and trail them wherever they go." Some papers carried reports: "Clash between deputies and strikers expected."

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SEPTEMBER 29

Hanford: Ninety strikers return to work at rate cut from 25 to 20 cents per hour.

Lodi: City and county officers arrest 14 men, 9 of them supposed Communists. The 9 "ringleaders" put in county jail in Stockton, with bail set at $3,000. Date of preliminary hearing set for October 23 (later the number of arrested reached 18). The warrants issued—"disturbing of peace", "high misdemeanor." Local charities and welfare council agree not to supply food to strikers. Newspapers carry report of the first "violence in the strike" when a vineyardist named Hammond "reported to have been beaten by strikers." The whole story was false. No beating took place. Hammond threatened pickets with shotgun. workers brushed it aside. Growers estimate 3,000 strikers involved; strike leaders claim 4,000. Some farmers willing to meet strikers' demands.

SEPTEMBER 30

Lodi: Two strikers arrested and given 120 days in the county jail for breaking several empty grape boxes which they seized from a truck on a ranch (total arrests).

San Francisco: Mr. H. Williamson sent to Lodi. Charles Crook already present in the strike area.

Lodi: Rumors that growers plan to form vigilance committee. Growers adopt Tokay grape control plan, which will cut by 50 percent the marketing of that variety; this is expected to weaken strike, since approximately 35 percent of workers (so growers contend) will not be wanted for picking. Mass meeting of strikers. 3,600 present.

Lodi: Ten more strikers arrested; total arrests to date, 29. Col. W. E. Garrison instructs his deputies that "all pickets are guilty of disturbing the peace. We want to arrest two or three leaders on each truckload of pickets. We will get the ranch owners to sign complaints. We will continue these tactics until we break up the strike. I expect the trouble to be over by Wednesday" (Oct. 4), reported Sacramento Bee, October 2. All organized welfare assistance has been closed to the striking pickers. Water sprinklers turned on at a large mass meeting. In the middle of the meeting, all of the sprinklers were turned on in the park. Within a minute sprinklers were conquered and the meeting continued.

Another mass meeting at night, demands for settlement: (1) 8-hour day at 40 cents per hour: 1½ pay for overtime; (2) immediate release for all strikers in jail; (3) recognition of Cannery and Agricultural Workers Industrial Union; (4) no discrimination in rehiring strikers; (5) those employed before the strike to be first to be reemployed; (6) hiring through the union; (7) dismissal of scabs; (8) settlement of all labor disputes through the union.

OCTOBER 2

Lodi: 1,500 growers and residents of Lodi held mass meeting at the Lodi Theater to discuss means of breaking the strike. Garrison, Sheriff Odell Williamson continued meeting against violence. Growers quite willing to form Vigilante leaders of the Lodi Chamber of Commerce, Business Men's Association and American Legion joined the midnight meeting. The meeting decided that promptly at 6 a. m. officers, aided by citizens, would start their move out to the farms to "end illegal picketing" and other practices of the strikers. A pledge was given that the "clean-up" would be by "orderly" means. But it was openly expressed that any resistance on strikers' part will cause violence. Strike leaders to be either rounded up by the vigilantes, mailed or "escorted" out of the city.

OCTOBER 3

Papers incite growers against strikers. Wayne B. Sellick, from Lodi, in Sacramento Bee, October 3: "Virtual military rule exists in Lodi today as the forces of law and order marshal themselves in opposition to an effort by communistic agitators to create a rule and ruin situation as a part of the so-called 'strike' of grape pickers in the district * * * the citizens, aroused at the menace to their everyday peace and quiet * * * not vigilante, but

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citizens imbued with a desire for law and order, are held in readiness at strategic places ready on call to rush to any point where trouble may be brewing. On the other hand 'strikers * * * break out in sporadic disturbance.'"

Even more outspoken in inciting growers against strikers is the following editorial of the Lodi sentinel of October 3:

"JUDGMENT DAY SOON

"Strikers is too complimentary a term to give the mob of agitators operating around local highways in an endeavor to keep honest men from work. A striker is a man who has worked and quits work in protest for improved working conditions or higher wages. The greater part of these malcontents would not work if given the opportunity—even at the wage scale they ask.

"Some were offered a chance to work at 40 cents an hour, but condition after condition was added to their first demands. Recognition of a so-called 'union', release of imprisoned 'comrades' and work for all men were among the pointless ultimatums delivered to growers. These professional agitators have not found Lodi a fruitful ground for their vocal explosions. The more violent of them have been quickly dispatched to the county jail, where they await sentences. Two others have been given 4 months' imprisonment for the prank of breaking boxes.

"The authorities have given these victims of unrest every opportunity to mend their ways. They have been warned constantly of their transgressions of the law, and still they persist in breaking laws. The limit of patience has been reached and violations of any kind will be dealt with severely in the future. Officers are taking no chances in arresting agitators unless they have a clear-cut case of legal transgression with the prospect of certain conviction. Yesterday there was an instance of one agitator resisting an officer. The penalties afforded by the law for such action are drastic, and this offender will soon understand that our laws cannot be meddled with.

"In the last few days, petty thievery has greatly increased in this city. Fortunately, the day is nearing when these 'comrades' will no longer disgrace the city of Lodi with their unpatriotic and obnoxious actions."

How Judge Solkmore of Lodi instructs a group of arrested workers in labor economics: "Some of you have listened to nitwits, half-baked radicals. You are misled by this bunch of agitators. These leaders do not mean any good by you except to incite you and stir you up so they can make a living off you. Most of you are good fellows. Some of you, I am afraid, are not intelligent enough to know what it's all about. If you were in the right crowd, I would gamble many of you would go to work at once. I am not attempting to threaten or coerce you. I am warning you if you insist on jury trials and if you should be found guilty, you cannot expect leniecy from the court" (Lodi News, Oct. 4).

OCTOBER 3

Lodi: "*Peaceful Citizens*" *in the Role of* "*Protectors of Law and Order*."—On October 3, early in the morning, about 75 strikers gathered on one of the streets to start out for picketing. "Before the deputies have assembled in readiness to follow the strikers to the fields, a large group of townspeople, growers, and members of the American Legion confronted the strikers, and after an exchange of taunts a member of the citizens' group (a young man formerly a football player) shouted "Let's give them the run", (Oakland Tribune, Oct. 3) and with this a fight was precipitated. The San Francisco Examiner, October 4 describes the event as follows: "A figure from the farmer's group darted across the street; then another, "Come on, boys, run em out of town. To h— with peace talk. Let's clean this up right now." The farmers grouped then charged "The silent, sullen strikers in front of the California Cafe and Noble Hotel . . ." "Flat-bodied trucks and ramshackle automobiles that customarily carried the strikers to picket duty were submerged in the surging attack . . ." "Traffic officers turned their backs, and went into a huddle with eyes averted from the fracas. The sheriff was somewhere else—so was the chief of police."

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"The strikers offered no resistance at first. Sheep-like, they moved in a mass along Elm Street and turned north—an overpowered army, along the Southern Pacific Railroad tracks . . ."

"Hundred or more strikers, grape growers at their heels, staged a speedy exodus along the ties toward the northern town of Galt. The main army dispersed, the business of "sniping" set in. Stray mavericks were pounced upon."

After this event the authorities were "convinced that the main strike difficulties had been ended" (Oakland Tribune Oct. 3).

October 3, evening, volunteer firemen of Lodi also joined the force of "law and order" by turning on a fire hose at a meeting of strikers, strike sympathizers, and curious citizens, gathered on one of the streets. Sacramento Bee, October 4, reports that "firemen barged through the crowd holding the powerful stream purposely high so as to thoroughly soak but not injure the agitators." The meeting then moved to another place, Lawrence Park, but was quickly broken up by tear gas bombs hurled into the group of citizens.

OCTOBER 4

Lodi: The "semi-military" machine of W. E. Garrison was functioning effectively. Every road was patrolled, every crossroad was guarded and pickets, terrorized by the forces of "law and order" and fearing "prompt arrest for other acts remained under cover" (Sacramento Bee, Oct. 4). It should be stated that Mr. Garrison was opposed to the method used by the citizen mob under his command, but he was powerless to check them. Strikers decided to accept 40 cents an hour from all growers willing to pay it.

OCTOBER 5

Lodi: Mathew Beronic, ranch foreman, seriously wounded. A striker, Albert Kurst, suspected. Miss Ruth Snyder, a Mills College graduate, fired upon while driving a car. Strikers at first suspected. But investigation showed she was fired on by vigilantes who thought she was the suspected striker. Thirty-five strikers under arrest to date. Following the shooting of Beronic, hundreds of strikers were rounded up, men, women, and children, and searched for weapons. About 2,000 persons were held in an improvised detention camp in the city plaza. The new suspect in the shooting is G. Secco. Hundreds of deputy sheriffs, ranchers, and farmers join in the "biggest man hunt in San Joaquin County history."

OCTOBER 6

Wasala Sula's hearing opened before Judge J. K. Solkmore's court. Sula, charged with trespass in connection with strike, represented by attorney G. R. Anderson, San Francisco. Sula demanded jury trial, Judge Solkmore, arguing against jury trial with Anderson, stated (reported Oakland Tribune, Oct. —): "These men are nothing but a bunch of rats, Russian anarchists, cut-throats, and sweepings of creation. This defendant doesn't know when he's well off if he wants a jury trial. In some places they would take him and the rest of his kind out and hang them from the town hall."

Anderson interrupted with the comment: "But they wouldn't dare to do that here."

"Don't you be too sure about that", the judge replied. "This town may see a few hangings yet."

"I want a jury trial," the attorney insisted.

"Juries be damned", replied the judge. "Juries are reminiscent of medievalism. They are a means of escape for guilty men. If I were innocent, I'd rather go before a judge. They usually get 12 boneheads to sit on a jury." Anderson secured transfer of other trial to the justice court of E. Douglas at Manteca.

Lodi: Two innocent bystanders reported they were fired upon by zealous volunteers (vigilantes). Chamber of commerce opens employment office for grape pickers.

San Francisco: Rabbi Irving F. Reichert, member of the California compliance board of the National Recovery Administration, sent a plea for the

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exercise of "intelligence and self-control" by peace officers in the strike situation to Governor Rolph. "In recent labor disturbances involving the fruit pickers, and in the tobacco industry, our investigations which were not published (established the disconcerting fact that in the great majority of clashes between peace officers and the strikers, the former were responsible for inciting to violence. The long suffering patience of the unemployed must be matched with equal patience on the part of our civil authorities."

OCTOBER 6

Lodi: Incidentally, in connection with Judge Solkmore's threat of lynch rule, it should be mentioned that California has a new law on its statute books, an antilynching law which makes punishable by imprisonment for not more than 20 years any person who participates in any lynching. "Lynching" is defined as "the taking by means of a riot of any person from the lawful custody of any peace officer."

OCTOBER 8

Statewide search being made for the slayer of M. Beronic.

OCTOBER 9

One hundred and sixty pickers registered with the Lodi free employment office.

OCTOBER 10

Fresno: Superior court jury found Louis Bradley, leader in the grape strike of a month ago, guilty on a charge of rioting. The case will be appealed. Bradley is open to a sentence of up to 2 years in the county jail or a maximum fine of $2,000 or both.

OCTOBER 19

Lodi: Sixteen men arrested during the Lodi strike attempted to escape from prison. The attempt failed.

PRESS EDITORIALS ON LODI STRIKE

Stockton Enterprise, September 29: "Worse than a plague of locusts, came agitators with communistic leanings into the Lodi section, working up, by threats and fiery oratory, a grape pickers' strike. * * *

"Like the years of the locusts, the present pestilence must also pass. Our hearts are with the grower. God bless him—he has been taking red ink long enough in these lean years."

Stockton Independent, September 29: "San Joaquin County doesn't want to turn its vineyards into the same bloody fighting grounds that the coal fields of certain eastern States became. The State should step in at once and set up a board of arbitration satisfying both sides, and to whose decisions both sides will adhere."

San Francisco Chronicle, October 5: While whitewashing Lodi vigilantes "who drove 'trouble makers' out of town and therefore broke up the grape pickers' strike" the San Francisco Chronicle states that "Laborers, nevertheless, do have the right in a proper case, to make exactly the sort of trouble that employers do not want them to make" and suggests that an impartial body be set up to settle strikes.

Bakersfield Californian, October 5: After pointing out that the strikers at Lodi were made up of "Turks, Mexicans, and Bulgarians under the leadership of radical aliens from Sacramento", it states:

"Law-abiding Americans do not counsel violence, but when farmers who have been in the red for the past several years see their crops perishing on the vines, they have little patience with a strikers' program which demanded immediate release of all strikers and an insistence that preference be given in reemployment to those who had walked out, and with the further demand that all nonstrikers be discharged."

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Napa Register, October 6: The vigilantes "have the sympathy and support of the general public. The only pity of it all is that vigilante committees are necessary; that the required relief cannot always be promptly obtained from the regularly constituted authorities."

Lodi Sentinel, October 5: "Peaceful statement of the so-called 'grape strike' in the Lodi district will bring everlasting credit to this community and to local and county administrators of the law. Lodi policy and officers from the sheriff's department arrested only leaders of the strike and left the misguided rank and file to fend for themselves. The leaders were quickly arraigned and taken to jail with a minimum of excitement and fuss. To the deputies of the community, a great deal of commendation is due on account of their constant work in policing the streets and highways and their uncomplaining sacrifice in giving time from their businesses at a season when they were most needed.

"Citizens of the community also deserve credit for the peaceful manner in which the entire affair was handled. They turned out in a body to assist in any way possible, kept their heads and did no acts of violence. A wave of hysteria was quickly put down and they conducted themselves as law-abiding citizens, but staunch in their desire to have the agitation squelched as quickly and quietly as possible.

"The one act of violence, a short-lived fight between a deputy and an agitator, was caused entirely by the agitator when he was not being molested. When the few blows struck were finished, there was no manhandling of the agitator who had attacked the deputy without provocation. He was quickly led to justice court and placed in jail.

"Other communities having similar difficulties may well take advantage of the example set by Lodi in dealing with their undesirables. Level-headed officers acting with careful legal advice and a body of citizens coolly taking orders from their leaders will prove too much for any gang of agitators. The agitators can have no complaint with the manner in which they were treated. For 3 days they were constantly warned as to their rights and when they continued to violate the laws, they were arrested. The campaign was expertly conducted."

Stockton Record, October 6: The Lodi vigilantes, according to the paper, used the vigilante method with "caution" for "they drew the line between the carpetbagger aliens under radical leadership and the sincere—between the 'workers' and the workers."

The logic of the paper is very touching: It's all right to break the law when dealing with so-called agitators and aliens. Who were the "sincere" workers among the grape pickers at Lodi this paper does not mention; are they native Americans? As for the agitators, it is well established now that most of the strike leaders were "real" Americans.

San Francisco Chronicle, October 7: "This vigilante business spells trouble.

"The right to strike and to stir up strikes is a legal one * * * within the law, there's no right to stop it (picketing), and beyond the law, it must be stopped only by law.

"There ought to be some constructive way to meet such situations. First, State or Federal intermediaries, to use their influence to prevent strikes and to urge the settlement of difference on terms fair to both sides. Second, a State constabulary, independent of local politics or influence, to prevent the use of force by either side."

Oakland Tribune, October 7: Criticizes Judge ——— ——— for using in the courtroom language inciting lynching.

Sacramento Union, October 7: Finds that all in all, the Lodi grape pickers' strike has been "very well handled by the authorities. Radical agitators must not be allowed to terrorize communities." According to the paper it is the strikers who resorted to terrorism and murder.

San Francisco Examiner, October 10: Praises Rickhart's stand.

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CONGRESSIONAL RECORD, HOUSE—MARCH 29, 1935

(79 Cong. Rec. 4707)

PERMISSION TO ADDRESS THE HOUSE

The SPEAKER. The gentleman from Massachusetts [Mr. CONNERY] is recognized for 5 minutes.

Mr. CONNERY. Mr. Speaker, this morning the papers told us there are strikes imminent in the automobile industry, the textile industry, the rubber industry, and the coal industry—strikes which will affect approximately 1,000,000 workers, to say nothing of their dependents, which will probably reach somewhere near 10,000,000 people in the United States.

I rise at this time to call to the attention of this body that the Committee on Labor, of which I have the honor to be chairman, in the last session of Congress reported a 30-hour work week bill to this House, and in the present session of Congress, has reported an equal labor representation bill to this House, and if those bills, together with the Wagner-Connery labor-disputes bill, were passed by this House there would be no strike in the automobile industry, the textile industry, the coal industry, or the rubber industry. Somebody will ask, "Why are they not passed?" We reported the 30-hour-week bill in the last session of Congress. We could not get a rule from the Rules Committee. We got 83 names only on the petition which I filed to discharge the Rules Committee. We could not get a rule on it. The Wagner-Connery bill, which is to settle labor disputes and give the National Labor Relations Board real power to settle labor disputes, was cast aside in the last session of Congress, was not allowed to come up for action and an innocuous resolution was brought in in the last days and passed to pacify labor, which did nothing for labor even though the members of the National Labor Relations Board did everything humanly possible to help labor. Their hands were tied because they had no power.

In this session of Congress the Committee on Labor has unanimously reported a bill to the House of Representatives calling for equal labor representation on the code authorities and on all boards having to do with the betterment of the conditions of workers in the United States. That bill is now before the Rules Committee. We cannot get a rule on that bill. That bill would do something for labor. It would do justice to labor. The codes of the N. R. A. as written today are written to crush labor. The code authorities are composed of all the big employers anxious to crush unionism and to drive the small independent business man out of business. Testimony before our Labor Committee showed instances of big cigarette indus- [4708] tries making net profit of $779,000,000 in 10 years, while their labor costs were only 2 percent. Under the present code set-ups the rich are getting richer and the poor are getting poorer. The bills reported by the House Labor Committee would cure these evils and prevent strikes and bloodshed. Why does not this House demand their passage? I am telling you today, my colleagues, that the responsibility for the 1,000,000 men who will go out on strike in the very near future, the loss of bread and wages to their families rests

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upon you here and not upon labor. It rests upon you, the Congress of the United States.

Mr. RICH. Will the gentleman yield?

Mr. CONNERY. I yield, but I only have 5 minutes.

Mr. RICH. I think the Members of Congress realize that the 30-hour-week bill will do more injury to labor and to the country than anything they can do at this time, and for that reason they are not interested in passing a bill of that kind.

Mr. CONNERY. That is merely the opinion of my friend from Pennsylvania. Why not bring the 30-hour work week bill on the floor here and discuss it, and not try to smother it as other labor legislation is being smothered?

Mr. MOTT. Will the gentleman yield?

Mr. CONNERY. I think this is of tremendous importance, and I would like to make my statement, and then if I have any time left I will be glad to yield.

Mr. MOTT. I did not understand whether the gentleman said the Labor Committee of this House had already reported the 30-hour bill or not.

Mr. CONNERY. Not this session. The House Labor Committee at present is awaiting action by the Senate on the Black 30-hour bill, which, I understand, may come up this coming week in the Senate for a vote. The Labor Committee of the House would, I believe, report out the Connery 30-hour bill unanimously tomorrow morning if we could get a rule from the Rules Committee to get it on the floor, but we know we cannot; we have been informed we cannot get a rule.

Mr. MOTT. I am for the 30-hour bill. Why not report it out and then circulate a petition to discharge the Rules Committee?

Mr. CONNERY. Because to discharge the committee requires 218 signatures, and we got only 83 in the last session.

Mr. MOTT. But we got 218 on the bonus petition.

Mr. CONNERY. We are going to take up the petition question in the committee next Tuesday morning.

Mr. MOTT. I hope the gentleman's committee will report it out.

Mr. CONNERY. Our committee will decide upon its plan of action on Tuesday, and I am sure that the House will have an opportunity soon to act on the 30-hour-week bill by the petition unless the Rules Committee change their views.

Let me say this in conclusion, Mr. Speaker, I want the House to know that these strikes could be avoided. Before the Military Affairs Committee a few days ago I offered a bill to prohibit the use of the National Guard in strikes unless permission is first secured from the Secretary of War. We know by bitter experience what is going to happen throughout the coal strike, throughout the automobile strike. throughout the rubber strike, throughout the textile strike; on the cry of "protect property rights" Governors will call out the National Guard and drive the strikers back into the mills with their bayonets as they did in Georgia; you are going to have National Guard men sticking their bayonets in the strikers' backs and then stepping on their bodies to pull the bayonets out. We heard such testimony before the Committee on Military Affairs. Human rights will mean nothing. You are going to have another spectacle such as that where

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the National Guard drove 300 striking girls into a warehouse and kept them there merely because those girl strikers asked for a decent wage and a decent opportunity to live.

Mr. MAY. Mr. Speaker, will the gentleman yield?

Mr. CONNERY. I yield.

Mr. MAY. In the instance of the striker who had the bayonet stuck in his back, it was done right on his own front porch in front of his family.

Mr. CONNERY. Yes, on his own front porch; and in practically all instances where strikers have been shot and killed in these strikes they have been shot or bayoneted in the back, which proves they were not taking the aggressive and trying to look for trouble. I think the House of Representatives realizes the importance of preventing such atrocities, the importance to the House of Representatives and to the American people of 1,000,000 workers going out on strike solely and only because they have been forbidden the right to bargain collectively; forbidden to call their souls their own; forbidden to join a union labor organization under penalty of discharge; spied upon at their work to find out if their sympathies were with the unions; speeded up like animals by the stretch-out and speed-up system.

Mr. Speaker, I could recount at length the atrocities committed against American workers by hired thugs and gunmen of the employers. I feel that unless Congress passes the legislation to which I have referred, then this House of Representatives is directly responsible for the desperation which drives 1,000,000 American workers to strike, because they feel that their Government is controlled by the big-moneyed employers of the country and that they can no longer look for justice or protection of their rights to the Congress of the United States.

[Here the gavel fell.]

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74TH CONGRESS
1ST SESSION

H. R. 7937

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1935

Mr. CONNERY introduced the following bill; which was referred to the Committee on Labor and ordered to be printed

A BILL

To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND DECLARATION OF POLICY

SECTION 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of ownership and out of numerous other modern industrial conditions, impairs and affects commerce by creating variations and instability in wage rates and working conditions within

and between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity between production and consumption, reducing the amount of commerce, and tending to produce and aggravate recurrent business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial unrest which burden and affect commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife.

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It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

3

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

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(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and

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any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

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(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of person in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be

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appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

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(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

Sec. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws, but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation

of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board

with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the

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Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to

encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or in any code or agree-

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ment approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to

rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the

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court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear

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in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time

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showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then

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the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and

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shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the

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transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judg-

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ment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such tem-

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porary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define

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and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

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(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdic-

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tion to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence

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required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting

forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its members, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to

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time, or of section 77 (b), paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

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74TH CONGRESS
1ST SESSION

H. R. 7978

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 1935

Mr. CONNERY introduced the following bill; which was referred to the Committee on Labor and ordered to be printed

A BILL

To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND DECLARATION OF POLICY

SECTION 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of ownership and out of numerous other modern industrial conditions, impairs and affects commerce by creating variations and instability in wage rates and working conditions within

and between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity between production and consumption, reducing the amount of commerce, and tending to produce and aggravate recurrent business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial unrest which burden and affect commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife.

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It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

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DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

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(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and

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any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created in the Department of Labor a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors

shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

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(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employee and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws, but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation

of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work, where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board

with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the

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Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

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SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to

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encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or in any code or agree-

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ment approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to

rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the

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court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear

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in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time

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showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then

the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and

shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the

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transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judg-

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ment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinafter provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive juridsiction to grant to the Board such tem-

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porary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define

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and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, sec. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

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(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdic-

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tion to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him

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to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting

forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant so this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (l) and (m) of the

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Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

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CONGRESSIONAL RECORD; HOUSE—MAY 14, 1935
(79 Cong. Rec. 7518)

Mr. CONNERY. Mr. Chairman, my distinguished friend and colleague the gentleman from New York [Mr. O'CONNOR] in his speech today referred to me and to the district which I represent, and I think that unconsciously he misquoted me. He intimated that I had said in a speech the other day that in the South now at the present time there are conditions of child labor and low wages. I did not say that in my speech the other day. I said that a few years ago they had child labor in the South, long hours of labor and very bad wage conditions.

Mr. BULWINKLE. Mr. Chairman, will the gentleman yield?

Mr. CONNERY. Gladly.

Mr. BULWINKLE. I wish to say to the gentleman, representing as I do a southern State, that there has been no child labor in North Carolina for many years and that the cotton-mill men of my county proposed a compulsory school law in order that the children of North Carolina might go to school instead of to work.

Mr. CONNERY. I am glad to hear my friend from North Carolina say that. There have been southern States, as he knows, of course, in which they did have child labor and extremely low wages; and organized labor had a very difficult time attempting to organize those southern States in the interests of shorter hours and accent wages.

The gentleman from New York spoke about the N. R. A. I think the gentleman made a very effective comparison of conditions since the inception of N. R. A. with conditions before that time. Before we had the N. R. A. the mill situation in New England and wage conditions in particular were very bad. While we had no child labor, we did have low wages and the speed-up and the stretch-out system in our mills, the same as they have now in the South; and today, although wages are a little better in the North, we have the speed-up and the stretch-out systems in both the North and the South. N. R. A. put the textile industry upon a 40-hour week, and that gave us in New England a break which we had never had in years, because previously the southern mills had longer hours, sometimes up to 60 and 70 hours a week, as against our 48-hour law in Massachusetts.

Mr. COLDEN. Mr. Chairman, will the gentleman yield?

Mr. CONNERY. I yield.

Mr. COLDEN. What does the gentleman mean by the speed-up and the stretch-out systems?

Mr. CONNERY. The stretch-out system works this way: Where a man formerly was supposed to tend one to three looms in a mill they suddenly put him in charge of six looms, which in many cases is ruinous to health.

The speed-up system is the system whereby the general operations of the plant move at a faster pace, the machines are speeded up. That is practiced not only in the textile industry but generally in the automobile industry and in almost all other industries. It was brought out in testimony before our committee that although wages in certain industries were raised from $4.50 up to $5 a day, which is one of the highest wages paid in industry, they speeded up the machines the men were using so that they did almost twice as much work

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as formerly. Then the manufacturers spread the word over the country that they had granted their employees great increases in wages, but were very silent as to the speed-up system they had installed.

I am for N. R. A. I am for it because it did away with child labor. It did away with so-called "yellow-dog contracts" whereby a man would have to promise in writing that in consideration of getting his job he would not strike during the time he was employed in the factory and that for a year after his employment in the factory ceased he would not come near the factory if there was a strike to picket or attempt to hinder that factory in any way. The contract also contained a promise that he would do practically everything he was told to do by his boss without regard for any of his rights as a citizen. In other words, it was slavery. The N. R. A. did away with child labor and the yellow-dog contract. Then it put the power of the United States Government behind labor in its right to organize, recognizing that labor had the right to organize.

Then in section 7 (a) of the N. R. A. the right of labor to bargain collectively through representatives of their own choosing was endorsed. Those four things alone in the N. R. A. would justify its existence and have been the greatest boon to labor that we ever had in perhaps 150 years of the existence of the United States. There are other phases of N. R. A. with which I entirely disagree, but those four points to which I have referred are epoch making.

Mr. MARCANTONIO. Will the gentleman yield?

Mr. CONNERY. I yield to the gentleman from New York.

Mr. MARCANTONIO. In referring to section 7 (a), of course, the gentleman does not believe that section 7 (a) is being enforced now?

Mr. CONNERY. No.

Mr. MARCANTONIO. Nor has it been given the meaning which the Congress gave it when enacting it into law?

Mr. CONNERY. No. Over in the Senate there was offered an amendment which would permit company unions, when the N. R. A. matter was up for action over there. Senator WAGNER, of New York, and Senator WHEELER, of Montana, made speeches against the amendment, and in their speeches they made it very clear that the Senate intended section 7 (a) should outlaw company unions. That amendment was defeated. Then the bill became law. An Executive order was issued making it very plain what section 7 (a) stood for. The next day a statement was given out to the newspapers in direct contradiction to the Executive order. This statement was given out by Mr. Richberg, and that statement is responsible for all the unrest that we have in labor today and for the strikes. I know that, because we have had all of this testimony before our committee.

And while we are on that subject, may I pause at this point to say that the gentleman from New York [Mr. MARCANTONIO] is a very valuable member of the Committee on Labor. May I also say that the Wagner labor-relations bill and its companion, the Connery bill, which we reported a few days ago, put teeth in section 7 (a). In other words, that is what the whole bill is about. It puts teeth into section 7 (a) and gives the National Labor Relations Board the power really to enforce section 7 (a). That is what the Wagner-Connery bill calls for.

Mr. KENNEY. Will the gentleman yield?

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Mr. CONNERY. I yield to the gentleman from New Jersey.

Mr. KENNEY. Have the hearings on the Wagner-Connery bill been printed yet?

Mr. CONNERY. The hearings will go to the Printer tomorrow. They are being prepared now. I may say also that the Secretary of Labor came before our committee, and Mr. Francis Biddle, Chairman of the National Labor Rela-[**7519**]tions Board, and testified in favor of the Wagner-Connery bill.

CONGRESSIONAL RECORD, HOUSE—MAY 16, 1935

(79 Cong. Rec. 7741)

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1958. An act to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

CONGRESSIONAL RECORD, HOUSE—MAY 17, 1935

79th Cong. Rec. 7771

Mr. TRUAX. * * *

Mr. Chairman, I want to call the attention of the Members of the House to one of the most sinister campaigns of propaganda being conducted by the big interests and by big business, the fellows who were down here in Washington a few days ago attending the convention of the United States Chamber of Commerce. In this convention they roundly criticized and condemned President Roosevelt and the new deal. This campaign of propaganda is directed to the Members of Congress so that we will oppose the Wagner National Labor Relations Board. I am happy to say that as a member of the Committee on Labor our committee voted unanimously to report this bill favorably.

Yesterday the Senate passed the bill by a vote of 63 to 12. During this very week and for some days before, we have had an organized propaganda by big business and by the big industrialists seeking to have this bill defeated.

Mr. Chairman, I have here some telegrams received today. They come from Columbus, Cleveland, and other cities in the State of Ohio. These telegrams and letters are inspired by the big business interests. They are the known enemies of all legislative measures that have as their end the benefit and welfare of the great mass of the common people of this country. I ask permission to insert in the RECORD a reply that I have drafted to all of these telegrams and letters. This reply is drafted upon the basis that the two greatest producing classes of the country are the farmers and wage-workers who create all the wealth and ultimately pay all of the taxes. [Applause.]

[Here the gavel fell.]

Mr. LUDLOW. Mr. Chairman, I yield the gentleman 2 additional minutes.

Mr. TRUAX. Mr. Chairman, I take this opportunity to make one last argument and to take one last parting shot, as you might call it.

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for the enactment into law of the Patman soldiers' bonus bill. We read in the newspapers that this bill has been forwarded to the White House and that the first of next week, probably Monday, we will receive a veto message from the President of the United States. I want to say that if this veto message actually does come before us on Monday of next week, in my humble opinion, it will be contrary to the wishes of the great majority of people in this country. It will be contrary to the wishes of the farmers in this country. It will be contrary to the wishes of the great mass of wageworkers of this country. It will be contrary to the wishes of the unemployed. It will be contrary to the wishes of 20,000,000 people who are on the relief rolls and it certainly will be contrary to the wishes of the ex-soldiers. Mr. Chairman, I propose to vote to override the expected veto. [Applause.]

CLEVELAND, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building:
Please defeat Wagner bill. Save country from ruin.

LOUIS ACKLIN.

CLEVELAND, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building:
Help defeat Wagner bill to save country from poorhouse.

Dr. W. A. WOMACK.

CLEVELAND, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building:
If Wagner bill not defeated, country infested with strikes and unrest.

WALTER J. BOEHMERT.

CLEVELAND, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building:
I sincerely urge you to defeat the Wagner dispute bill.

GEORGE BERGHAUS.

CLEVELAND, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building:
Imperative to defeat Wagner bill; avoid continuous strikes.

N. P. LARSEN.

CLEVELAND, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building:
I sincerely urge you to defeat the Wagner dispute bill.

ROGER D. MIDDLEKAUFF.

CLEVELAND, OHIO, *May 15, 1935.*

[7772] Hon. CHARLES V. TRUAX,
House Office Building:
Defeat Wagner bill, save country from chaos.

HENRY KLEFMAN.

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CLEVELAND, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building:
Wagner bill will force industry to fall; organizers please defeat.

JOHN C. CRAL.

CLEVELAND, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building:
Wagner dispute bill danger to all industries. Help defeat it.

JAMES HOLAN.

CLEVELAND, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building:
Defeat Wagner bill, avoid strikes and industry trouble.

JOHN KOTT.

Mr. Chairman, here are 10 telegrams evidently inspired from the same source and apparently dictated by the same hand. You will note than they are all transmitted on the same day, May 15, 1935. The time of transmittal ranges from 11:46 a. m. to 12:15 p. m., exactly 29 minutes to send these telegrams from the Cleveland office of the Postal Telegraph Co. I want to commend the Postal Telegraph Co. for their speed in transmittal and also for the fair dealing in absorbing the 5-cent Federal tax on telegrams, instead of charging it to the sender, as is done by the Western Union Telegraph Co., a Kuhn-Loeb, Morgan outfit, so I an told.

In the State of Ohio the Postal Telegraph charges us 25 cents for a 10-word message, while the Western Union charges 30 cents for the same message. This is a racket, resulting in millions of dollars of illicit profits annually. Getting back to telegrams, I am told that the passage of the Wagner bill will cause ruin in the country. It will send people to the poorhouse. It will promote strikes and unrest. It will send us hell-bent to chaos. Industry will fall, and so forth, and other asinine nonsense.

History tells me, and the most costly depression in all history proves, that the racketeering bankers, industrial pirates and millionaire bluebeards did more to send this fair country of ours headlong into irreparable and irrreconcilable industrial ruin, financial chaos, than all of the horny-handed farmers and wageworkers combined.

A financial dictator nor an industrial czar never arises from the ranks of the workingman. A Robespierre is never born from the masses of those who earn their bread by the sweat of their brow.

Here are a baker's dozen of telegrams, ranging from the American Rolling Mills Co. to the Tinnerman Stove & Range Co. These messages are interesting but not necessarily dangerous.

MIDDLETOWN, OHIO, *May 17, 1935.*

Hon. CHARLES V. TRUAX,
House of Representatives:

I cannot believe that you would support the Wagner bill as now written if you understood serious situation confronting employees in industry should this law be enacted as passing Senate. Employees would be subject to racketeers and abuse, which would result in strife such as this country has never known. Sen-

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ator Wagner at 1934 hearings agreed his bill ought to be amended so as to prohibit intimidation and coercion from any source. We urge you to insist on this amendment before final passage of this legislation.

CHARLES R. HOOK,
President the American Rolling Mill Co.

COLUMBUS, OHIO, *May 17, 1935.*

The Honorable CHARLES V. TRUAX,
House Office Building:

If enacted, Wagner bill should by all means be amended to prevent intimidation and coercion from any source exerted on employees by outside influences; otherwise dissension and strikes will increase.

DON K. MARTIN,
Ohio Manufacturer's Association.

CLEVELAND, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
Representative at Large from Ohio,
House Office Building, Washington, D. C.:

SIR: As employers of labor we protest against the enactment of the pending Wagner labor-disputes bill.

JOHN NEWELL,
President, Reid Products Co., Cleveland, Ohio.

TRENTON, N. J., *May 14, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building:

We strongly urge you to vote against the Wagner bill; also we ask you to work for an extension of the National Industrial Recovery Act for a period of 2 years.

JOHN A. ROEBLINGS SONS CO.,
W. A. ANDERSON, *Vice President.*

DAYTON, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building:

Have discussed with a number of your constituents here their feeling in regard to Wagner bill, and the universal feeling seems to be that there are many features of the bill which will prove disastrous to the industries of your State.

R. T. HOUK.

CLEVELAND, OHIO, *May 15, 1935.*

CHARLES V. TRUAX,
House Office Building:

We urge you to do all in your power to defeat Wagner labor disputes bill, which threatens introduction of unlimited industrial strife and indefinite postponement of economic recovery.

TINNERMAN STOVE & RANGE,
GEORGE A. TINNERMAN.

DAYTON, OHIO, *May 16, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building, Washington, D. C.:

We emphatically protest passage Wagner labor bill, respectfully requesting your active opposition to it.

DAYTON TOY & SPECIALTY CO.

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CLEVELAND, OHIO, *May 16, 1935.*

CHARLES V. TRUAX,
House Office Building, Washington, D. C.:

We appeal to you to vigorously oppose the Wagner labor relations bill, as we are very strongly of the opinion that its passage would create wide-spread industrial disturbance, destroy amicable relations existing between employers and employees for many years, and retard recovery.

NATIONAL MALLEABLE & STEEL CASTINGS CO.,
CARL C. GIBBS, *President.*

MARIETTA, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building, Washington, D. C.:

We consider the Wagner labor relations bill, S. 1958, un-American and unfair to employers and unorganized labor, and believe it packs a lot of dynamite for all industry. We respectfully urge your opposition to the measure, because of its many one-sided provisions.

MARIETTA TORPEDO CO.

DAYTON, OHIO, *May 16, 1935.*

CHARLES V. TRUAX,
House of Representatives, Washington, D. C.:

We respectfully urge you to oppose Wagner bill.

HARRIS THOMAS DROP FORGE,
G. E. HARRIS.

COLUMBUS, OHIO, *May 14, 1935.*

Representative CHARLES V. TRUAX,
House Office Building:

Please throw your influence against the Wagner labor-disputes bill, which has been approved by Senate Educational Committee on Labor and reported to Senate. This bill is a menace to American industry and will greatly retard a business come-back.

R. H. BELL, Jr.,
Neil House.

CLEVELAND, OHIO, *May 17, 1935.*

Hon. CHARLES V. TRUAX,
House of Representatives Office Building:

Cannot too strongly urge your vote against Wagner labor-disputes bill, despite pressure upon you by selfish interests not truly representative of working men and women.

H. P. EELLS, Jr.

CLEVELAND, OHIO, *May 15, 1935.*

Hon. CHARLES V. TRUAX:

Avoid paying membership dues to American Federation of Labor by defeating Wagner bill.

ALBERT PAVETKA.

[7773] The following letter emanates from one of the largest retail merchandising establishments in Ohio:

CLEVELAND, OHIO, *May 2, 1935.*

Hon. CHARLES V. TRUAX,
House of Representatives, Washington, D. C.

DEAR MR. TRUAX: In view of the fact that the proposed Wagner labor-disputes bill, S. 1958, has come out of the Senate committee, we ask that you give careful consideration to the serious effects that undoubtedly would follow the adoption of such a bill.

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Since the passage of the N. I. R. A. we have had considerable experience with many of its phases, and particularly with 7 (a). While we have always believed that 7 (a) should have contained the same prohibitions against coercion, intimidation, etc., on the part of employees, employees' organizations, and labor unions (of which some portion of the employees might perhaps be members), that were imposed upon the employers by the specific language of the act, nevertheless we feel that it would be far better to continue 7 (a) in its present form than to operate a retail store under the proposed Wagner bill.

You are no doubt familiar with the favorable as well as the unfavorable features of the bill itself, and we hope you will oppose its enaction.

Very truly yours,

THE HALLE BROS. CO.,
JAY IGLAUER,
Vice President and Treasurer.

I know this merchandising organization only by reputation. I know them to handle a high-grade line of merchandise and to charge and receive prices commensurate thereto. They complain about their experience with section 7 (a) of N. I. R. A. Strange to relate, organizations of employees complain about this same section. They contend that Donald Richberg nullified the intention of Congress and the intention of the President by his arbitrary interpretation of section 7 (a) of the Recovery Act. Organized labor contends, and rightly so, that the N. I. R. A. should be continued, if not for any other reason than because of the abolition of child labor, outlawing of "yellow dog" contracts, and the right of collective bargaining under section 7 (a).

The truth is, however—labor knows this, and it is also known by the real friends of labor in Congress—that section 7 (a) is not enforced, and the big industrialists and the big commercialists do not want it enforced. I must admit the contentions in this letter have more merit than the others. This firm is to be commended, because in over 42 years of business life they have had no labor disputes until March 1934. Had a similar condition been observed by the majority of large employers of labor, there perhaps might not be so much need today for the legislation we are considering. The regrettable fact remains, however, that such has not been the experience of others. Hence the imperative need for this legislation.

I am happy to include this letter from the Hancock Savings & Loan Co.:

THE HANCOCK SAVINGS & LOAN CO.,
Findlay, Ohio, May 3, 1935.

Hon. CHARLES V. TRUAX,
House Office Building, Washington, D. C.

DEAR MR. TRUAX: We know you are flooded with letters and arguments, both in favor of and against the legislation that is proposed, and we hesitate to write you, but we feel it our duty, and we feel quite sure that you will agree with us that there are many bills before the Legislature at this time that are very radical. We refer to the Wagner labor-disputes bill and the Black 30-hour bill, as well as the social legislative program that is before you.

We feel that if business was left alone today, we would be on the way to recovery, and when business was approaching, or was near, normal would be a much better time to consider social legislation, as well as other legislation mentioned above.

We would appreciate a very serious consideration along this line.

Money is piling up in all financial institutions, who are waiting for an opportunity of investment, if given the assurance there was going to be no radical change.

With kindest personal regards, I remain,

Sincerely,

R. C. FIRESTINE, *Secretary.*

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I expected, naturally, that this legislation would be opposed by the money lenders. I am at a loss, however, to understand just how money-lending institutions would be adversely affected by the enactment into law of the Wagner-Connery labor relations bill. As I know the business, their hours are not long, the work is not toilsome, the employees are not numerous. They have few labor disputes. I fail to perceive how this institution would be seriously affected by the 30-hour-week bill, but here is the colored gentleman in the woodpile.

You will note that these people are opposed to the President's social security legislative program. In other words, they are against the new deal, they are against old-age pensions, employment insurance, old-age annuities. I take it that they also oppose the Rayburn-Wheeler utility bill which proposed to abolish once and for all time the real overlords of creation, the Morgans, the Dohertys, and the Mellons of public-utility holding companies.

You assert, Mr. Firestone, "money is piling up in all financial institutions." I have heard that statement made before. I heard that statement made on the floor of the United States Senate a short time ago. A distinguished Senator asked for the proof of that assertion. He was not furnished the proof. If your statement is true, then why is it necessary for the United States Government to authorize $3,000,000,000 of Government funds to refinance farms—to authorize nearly $5,000,000,000 Government funds to refinance homes? If your statement is true, then why is it necessary for the Reconstruction Finance Corporation to act as a central bank, practically owning 6,000 of the 15,000 banks in the country open and doing business today? No doubt you will try to tell me that the millions of workers in this country who are unemployed now and who will have a tendency to be unemployed when this country comes out of depression, largely because of progress in mechanical agencies and machines, no doubt you will tell me that these people will suffer more than in the past if this bill is enacted into law. Frankly, I do not believe any such statements or assertions. I think you are in error and that you will so admit once this bill is enacted into law and becomes operative.

You will recall that only a short time ago the brewers of the country were having bad attacks of financial jimjams because their places of business were closed as tightly as tombs. Then the Seventy-third Congress, responding to the wishes and desires of the people, legalized beer and other beverages. When that legalization was in process of consummation by Congress, we were told by brewers and prospective brewers that the people, and especially the thirsty ones, would soon be lapping up 5-cent beer. That ill-timed prophecy has never been fulfilled to my knowledge. The price is still 10 cents. Instead some brewers are attacking the proposed processing taxes for hops, and now they rant about this bill. The manager of the company whose place of business is in my own congressional district, I am sure is unduly excited when he says that this measure "spells ruin for industry in this country." The fact that he spells the words "ruin" and "oppose" on his typewriter with red ink is prima facie evidence that he is excited. He concludes his little epistle with these words, "the Black 30-hour bill is just as bad." Here again I must disagree with this gentleman.

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FINDLAY, OHIO, *May 11, 1935.*

Hon. CHARLES V. TRUAX,
House Office Building, Washington, D. C.

DEAR MR. TRUAX: If there ever was a measure that spells ruin for industry in this country, it is the Wagner labor-disputes bill, S. 1958.

We do trust you will see fit to oppose this bill.

The Black 30-hour bill S. 87, is just as bad.

Thanking you, I am, very truly yours,

WM. J. ALTMEYER,
Manager the Krantz Brewing Co.

DAVID KIRK, SONS & CO., LTD.,
Findlay, Ohio, May 4, 1935.

The Honorable CHARLES V. TRUAX,
House Office Building, Washington, D. C.

MY DEAR CONGRESSMAN: The writer was very much startled by the news that the Wagner labor-relations bill now appears acceptable to the majority of Congress.

This is inconceivable to me that our Representatives would even consider such a dangerous piece of legislation, which is so vague in its wording that widespread confusion and endless litigation must follow any attempt at interpretation.

This bill would put Federal Government endorsement on the closed shop, which would definitely lead to the recognition of national labor unions in all our industries, providing for ma-**[7774]**jority rule, by which 51 percent of the employees of industry could decide for the other 49 percent, and an outsider could originate or enter into a dispute by which he is not affected and need not be either an employer or an employee.

The bills S. 87, S. 1958, H. R. 3657, and the Wheeler-Rayburn utility bill should be defeated for the best interests of the country, of which you and I are a part.

The writer would be pleased to hear your views on this, as I have always respected your judgment a lot in matters of this kind.

With kindest personal regards, I remain,

Yours very truly,

DAVID KIRK, Jr.

Here is another from my own congressional district, the eighth of Ohio. This comes from a well-known wholesale grocers and importers company. The writer of this letter is "much startled by the news that the Wagner-Connery bill appears acceptable to the majority of Congress." Well, this gentleman must recall that the majority of Congress is the Democratic majority in Congress and the majority that enacted into law the Roosevelt recovery measures. I voted for practically all of these recovery measures. I confess that I voted against the so-called "administration banking bill" a few days ago. To me this bill meant a continuation and perpetuation of the bankers' racket, which costs the taxpayers of this country billions of dollars every year. Therefore, I voted "no" on this bill.

This gentleman also discloses a clearly defined line of demarcation between his views and those of us who are fighting for an equitable redistribution and distribution of national wealth, property, and income. I am transmitting to the gentleman mentioned a copy of the letter which has been prepared to answer the hundreds of similar propaganda letters and telegrams received in my office. There are literally hundreds of these communications in the same vein and along the same lines that could be included if time and space and ethics permitted. Some of our constituents resent and object to the acknowledgment and answering of these letters by form letters. Some of them call them circular letters. I regret this incident deeply

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and can only say to these constituents that a limited office force and a limit on our time, even though we do not govern our time by the N. R. A., precludes a more formal and personal reply.

Now come some gentlemen living up in the Seventeenth Ohio Congressional District, namely, the Swixher & Shafer Auto Co., dealers in Cadillac, La Salle, Stutz, and so forth. Perhaps these gentlemen are influenced by the kind of customers they deal with, since it will be universally admitted that owners ond drivers of Fords and Chevrolets are inclined to be more concerned with the welfare of the working people than are the owners and drivers of Cadillacs, La Salles, and Stutzes:

SWISHER & SHAFER AUTO CO.,
Mansfield, Ohio, May 13, 1935.

Representative CHARLES V. TRUAX,
Washington, D. C.

DEAR REPRESENTATIVE: We are writing this letter asking you to help us in protesting the Wagner labor-relations bill (Senate bill 1958). which we are sure if passed will make it bad for the manufacturer as well as the automobile dealer.

We will appreciate your help.

Thanking you in advance for your support.

Yours very truly,

W. O. SWISHER.

Here comes our old friends, the American Ship Building Co. Here is their letter:

THE AMERICAN SHIP BUILDING CO.,
Cleveland, Ohio, May 14, 1935.

Hon. CHARLES V. TRUAX,
House Office Building, Washington, D. C.

HONORABLE SIR: We would like to take the liberty of giving you our views in regard to the Wagner National Labor Relations Act, or any bill embodying its principles. From every angle we believe that this bill would be detrimental to the public. By far the large majority of employers and employees in this country have maintained harmonious relationships for years, and there are a great many companies where satisfactory employee representation plans have been in actual operation for long periods of time and where the employees themselves have insisted upon exercising this right by themselves, as they are now doing, without any outside jurisdiction or interference.

This bill is backed only by the American Federation of Labor and the professional labor leaders who, on their own figures, represent not more than from 10 percent to 12 percent of the country's industrial workers. In its practical application this bill would allow the rights of the other 90 percent of the country's workers to be entirely subjugated to this 10 percent. It offers nothing to prevent labor organizations and other forces from exercising any degree of violence, coercion, or intimidation against employees. It contains nothing which would make professional labor organizations in any way responsible in the eyes of the law.

If passed this bill would do more than anything which has occurred in recent years to set up false standards of class distinctions and of class interests where previous relations were harmonious and where there is no real diversity of interests

May we urge that you do all in your power to defeat this bill?

Very truly yours,

R. B. ACKERMAN, *Secretary.*

It seems that these gentlemen suddenly become vitally alarmed about the welfare of the "people." In fact, they go so far as to say that the Wagner National Relations Act will be "detrimental to the public." They take a left-handed crack at labor also by saying the bill is "backed only by the American Federation of Labor and the professional labor leaders who, on their own figures, represent not more than from 10 percent to 12 percent of the country's industrial workers."

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I am sorry, Mr. Ackerman, that I cannot go along with you in this philosophy or theory. It was Mr. Grace, president of the Bethlehem Steel Co., that company which built so many ships for the Government during the World War, and who made millions of dollars from the Government, it was Mr. Grace, when testifying before the Senate Committee Investigation of Profits in War Munitions, it was that same Grace who admitted that he had received a bonus of nearly $3,000,000 for his own services, who acknowledged that he was opposed to the payment of the soldiers' bonus because he had never looked at it in that way before. So to the American Ship Building Co. I can truthfully say that the bill will be enacted into law by the Seventy-fourth Congress, signed by the President of the United States, and they will have a fair chance to prove or disprove their contentions.

THE AMERICAN COACH & BODY CO.,
PUBLIC UTILITIES EQUIPMENT MANUFACTURERS,
Cleveland, Ohio, May 14, 1935.

Hon. CHARLES V. TRUAX,
House Office Building, Washington, D. C.

HONORABLE SIR: We are sincerely interested in the Wagner bill which is now pending before the House. We believe that the Wagner bill would be an injustice to all employers, small or large, because it gives not only the American Federation of Labor unions a free hand to coercion but also encourages the professional labor organizer, which is resulting in nothing but disturbance, strikes, and racketeering. Unless similar provision is enacted to protect the employers, to make the union organizations responsible, either direct to the Federal Government or courts, there will be nothing but friction and strikes and retardment in progress.

For this reason we believe the Wagner bill should be defeated, and we are hereby asking you, in your own fair judgment, to help defeat this bill.

Sincerely yours,

THE AMERICAN COACH & BODY CO.,
JAMES HOLAN, *President.*

I note from the heading on this letter that the company caters to the manufacturers of public-utility equipment. I assume, therefore, that this company will also be against the Rayburn-Wheeler bill that outlaws and abolishes public-utility holding companies. It appears that the American Coach & Body Co. has a big grievance against the American Federation of Labor My experience teaches me that were it not for the organized activities and militant spirit of the American Federation of Labor, with their fighting and courageous leader, Mr. William Green, and of other kindred organizations, labor would be crushed completely out of existence by certain employers and their henchmen.

The Dayton Chamber of Commerce, Dayton, Ohio, writes me as follows:

DAYTON CHAMBER OF COMMERCE,
Dayton, Ohio, April 22, 1935.

Hon. CHARLES V. TRUAX,
House of Representatives, Washington, D. C.

DEAR SIR: Acting under instructions of the board of directors of the chamber of commerce, I am pleased to transmit to you enclosed a copy of the report of the taxation and legislation committee, together with the action of the board of directors of this organization, on Senate bill no. 1958, known as the "Wagner labor-disputes bill."

We trust that you will give the attitude of this organization and the reasons therefor your very serious consideration, and with the **[7775]** hope that it may be

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somewhat of a guide to you in any vote that you may register as a Member of Congress on this very important and exceedingly far-reaching bill.

Very truly yours,

DAYTON CHAMBER OF COMMERCE,
By WAYNE G. LEE, *Managing Director.*

They send me a copy of the action of the committee on legislation and taxation and the board of directors of the Dayton Chamber of Commerce re Wagner labor-disputes bill. They wind up that statement by saying:

> One can readily grasp the bureaucratic control that would be exercised by the Government not only under industrial management itself but upon the employee who might be unwilling to join a labor union. Your committee unanimously recommends the chamber's opposition to the passage of this bill.

Signed "W. S. McConnaughey, chairman taxation and legislation committee."

You will note in the foregoing letter that the Dayton Chamber of Commerce submits the letter with the hope that it will be "somewhat of a guide" to me in any vote that I may cast on the bill. My dear friends, I am sorry to state that my mind was made up on this bill some time ago, as my mind is made up on all legislation that is of far-reaching benefit to the common people. I think you are not in full possession of the facts in this case or you would not solicit me to oppose this legislation.

Here are several more from Dayton, and I insert them in the Record at this point:

DELCO PRODUCTS CORPORATION,
Dayton, Ohio, April 30, 1935.

Hon. CHARLES V. TRUAX,
House Office Building, Washington, D. C.

HONORABLE SIR: As a representative of industry and as one of your constituents, I wish to enter my protest in opposition to the proposed legislation known as "the Wagner labor relations board bill," which I understand is now in the hands of the Senate Committee on Education and Labor.

As I see it, this bill injects the Federal Government further into the relationship between virtually all employers and employees, regardless of the number of persons employed; it creates an all-powerful central administrative body which may summon employers to appear anywhere in the country on 3 days' notice; and it forecloses the rights of minorities to representation in collective bargaining negotiations by setting up a majority rule.

With reference to the central administrative body referred to above, their findings of fact bind any court to which an appeal is made, although the board itself is not bound by "the rules of evidence prevailing in courts of law." In other words, the board can reach a decision on hearsay or rumor and the courts must accept as "facts" what the board accepted as "rumor."

Further, while the proposed legislation prohibits certain labor practices as unfair on the part of the employer, it sanctions the closed union shop and imposes no restraints on labor unions.

There are many additional features in the bill to which I object, and which I will not burden you with at this time, but I feel that if this proposed legislation is enacted into law it will not only place additional hardships on industry and create additional strife between employer and employee but will also seriously retard our progress toward complete economic recovery.

I therefore bespeak your earnest support in aiding to defeat this proposed legislation.

Very truly yours,

CARL L. STORCK,
Assistant to the Factory Manager.

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One is from the Delco Products Corporation, a subsidiary of the General Motors Corporation. Needless to state that these gentlemen are all wrong in their premises. I take it from a perusal of the letter that they offer no opposition to a continuation of the N. I. R. A., which is designed primarily to benefit and protect the big industries. The conclusions in this letter are wholly erroneous. The bill does not further inject the Federal Government into the relationship between employers and employees, only as it should be injected therein to protect the rights of those workmen, those vital cogs, in these huge industrial machines that rob workingmen of their youth and future earning powers. The bill, of course, should and does sanction closed union shops, but does not impose restraints on legitimate labor unions. It gives the employees themselves the right to say to what organization they will belong without dictation or punishment by the employers.

AMERICAN ZINC OXIDE CO.,
Columbus, Ohio, May 9, 1935.

Congressman CHARLES V. TRUAX,
House Office Building, Washington, D. C.

DEAR CONGRESSMAN TRUAX: Referring to the Wagner labor-disputes bill (S. 1958), it is our opinion that legislation of this nature will aggravate labor troubles and do more harm to a very large majority of workers than it can possibly do good to the comparatively small number advocating such legislation.

Permanent legislation prescribing relationships between management and labor is not desirable and can result only in additional disputes, arguments, and general confusion and dissatisfaction, which means hardship to the workers and their families.

What is needed, in our opinion, is more genuine cooperation between labor and management, and legislation such as the Wagner bill would make this more difficult.

Will very much appreciate a line from you stating your position on this piece of legislation and your opinion of the bill's chance for passage.

Yours very truly,

J. I. WALL, *Manager.*

This one is from the American Zinc Oxide Co., a subsidiary of the American Zinc, Lead & Smelting Co. You will be interested to know that the only acquaintance I enjoy with these corporations is by hearsay or reputation. I have not the pleasure of knowing them personally in the 12 years during which I have been a servant of the people, first as director of agriculture for the State of Ohio for 6 years, and now as Representative at Large for the State of Ohio. I repeat that never once during my 12 years' service to the public have any of these gentlemen deemed it necessary to contact me heretofore. Now, since they seemingly fear the "organized onslaughts of organized labor," they appeal to me for help. That is futile, I beg to state. You state more "genuine cooperation" is needed. I am in accord with that viewpoint, and this is exactly what the Wagner-Connery bill proposes to do. Mr. Wall, I take this opportunity to answer the last paragraph of your letter. My judgment is that the bill will pass the House of Representatives by a large majority.

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LOCKHART IRON & STEEL CO.,
Pittsburgh, Pa., May 13, 1935.

Hon. CHARLES V. TRUAX,
The House of Representatives, Washington, D. C.

DEAR SIR: We are writing you in connection with the Wagner labor relations bill, as we wish to go on record as opposing the passage of this act, as in our judgment, it would by its terms and procedure tend toward a continuous stimulation of complaint.

It would excite irritation and result in increased bitterness in employment relations, thus having the effect just the opposite to that intended to improve, and would indefinitely prolong the return of reasonably prosperous conditions in this country.

The bill if enacted would practically impose the closed shop upon industry and throw the labor situation into the hands of the labor union, but there is nothing said that would prevent labor organizations from exercising coercion or intimidation.

We trust you will use your best efforts to defeat the bill in question.

Yours very truly,

LOCKHART IRON & STEEL CO.,
J. M. GILLESPIE, *President.*

Assuredly those of us in the House of Representatives who are vitally interested in the welfare of American labor are not surprised when we receive letters of protest from the subsidiaries of the steel trusts. Here is one from the Lockhart Iron & Steel Co. The president of the corporation, Mr. J. M. Gillespie, is having nightmares about "increased bitterness in employment relations." Let me humbly suggest, friend Gillespie, that the continued opposition of the steel trusts to this and other measures designed to help the wageworker will do more to promote and increase that "bitterness" than all of those measures combined.

Mr. Chairman, I conclude my remarks with a reaffimation of my attitude and position on this all-important legislation.

TRUAX REPLIES TO OPPONENT OF WAGNER-CONNERY LABOR-RELATIONS BOARD

As a member of the Committee on Labor, I voted to report favorably the Wagner-Connery labor-relations bill.

The two greatest producing classes of the country are farmers and wageworkers who create all the wealth and ultimately pay all the taxes.

For the past 15 years both of these classes have been exploited by the millionaire overlords and racketeering bankers with the result that farmers were universally bankrupted and wageworkers universally unemployed. The money lenders and Shylocks finished the job by wholesale and ruthless foreclosures of farms and homes.

The Roosevelt Administration sponsored and the Seventy-third and Seventy-fourth Congresses enacted into law the [7776] Agricultural Adjustment Administration, the Farm Credit Administration, and the Farm Bankruptcy Act for the relief and benefit of farmers. N. I. R. A. was created for the benefit of industrialists. Banking legislation was enacted for the benefit of bankers and capitalists. H. O. L. C. was established for the relief and salvation of stricken home owners.

To complete this circle the establishment of the National Labor Relations Board and enactment of the 30-hour-week bill are necessary, the first bill to provide for a peaceful forum for both industry and

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labor and to benefit employers, workers, and the people at large. It is designed to put "teeth" in section 7 (a) of the N. I. R. A. It is necessary to guarantee to labor the right of collective bargaining. It will promote industrial peace instead of riotous discord.

Fewer hours per day, less days per week, will reduce the ranks of the 11,000,000 unemployed caused not only by the depression but by the permanent loss of jobs due to the mechanistic age. I will vote for the bill.

[Here the gavel fell.]

CONGRESSIONAL RECORD, HOUSE—MAY 17, 1935

(79 Cong. Rec. 7779)

THE WAGNER-CONNERY LABOR-DISPUTES BILL

Mr. EAGLE. Mr. Speaker, I ask unanimous consent to insert in the Record as part of my remarks a letter which I have written to a constituent upon the subject of the Wagner labor-disputes bill.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. EAGLE. Mr Speaker, under the leave to extend my remarks in the Record, I include the following letter written by me to a constituent upon the subject of the Wagner-Connery labor-disputes bill:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., May 14, 1935.

Mr. R. E. POWELL,
Care Humble Oil & Refining Co., Baytown, Tex.

DEAR MR. POWELL: Your letter of the 10th instant is received and is welcome and has been read with care and interest concerning the Wagner-Connery labor-disputes bill.

Every vote I have cast here has shown that I would not overtax and never confiscate capital or property. They show that I recognize as fully as any man living that our capitalistic system is the best system ever devised, and, of course, I know that profit is the proper reward and service is the justification of business and industry.

After 12 years of misrule and robbery and pillaging of the public, we found the country bankrupt and ruined when we took charge on March 4, 1933. Our first acts were to save the banks, the railroads, the building-and-loan companies, the insurance companies, and all legitimate big business enterprises—and they were all broke except oil. We have saved 1,000,000 homes and hundreds of thousands of farms from foreclosure. We have voted for and lifted the pay of labor. We have brought producers' prices up above cost.

But no sooner do we get business and industry saved and under way than there is a great centering here in Washington—every hotel is full day in and day out, week in and week out—of the agents and attorneys and lobbyists whose business we saved, trying now to make us stop the new deal so that they can again make peons out of producers and makes slaves out of labor.

I wish I could talk it out with you as there is not space or opportunity to write it fully. For one, I rebel at their propaganda that we stop the new deal and again turn the country over to their tender mercies.

If all the management were like the Humble's management, and like you treat your 2,500 employees, then what you say in your letter might be followed. But it is not, Mr Powell. After 2 weeks' hearings in our Labor Committee, such brutal disregard of the rights of helpless men who work was conclusively proven to exist in the great industrial plants of the North, that I know we must either protect labor or labor would be enslaved completely. Those manufacturers want to

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make all the money, and at the expense of producer and labor; and I remarked in committee that if big business and intensified industry made brutes of men like that, then I hoped Texas would remain a cow ranch.

In the industrial sections of the country they have ignored section 7 (a) of the N. R. A., and have put forth spurious unions of their own for themselves to deal with, under false construction of 7 (a) by Mr. Richberg. Now they want to kill N. R. A. and kill A. A. A.—after we have started the country up prosperously again—so that they can make peons of labor and peasants of farmers, so that big business, under the dominance of Wall Street, can make even bigger profits at the expense of labor and producers.

For instance, in the 10-year period from 1924 to 1934 four big cigarette makers, like Camel's, Lucky Strike, Chesterfield, and others, while paying the management enormous salaries, and while paying tobacco growers less and less until they were bankrupt, and while paying all taxes and interests and all labor and material and freight and expenses, decreased the pay per hour, let out one-third to one-half of their employees, lengthened the hours of work, and yet paid dividends of $769,000,000. It is pitiable the conditions to which they drove their workers. Contrast that with the beautiful and noble way in which you and the Humble have treated your employees. The automobile industry is equally harsh, and big manufacturing in the East universally so.

If we do not perfect section 7 (a) in these labor bills and enact it, so as to preserve minimum wages, maximum hours, the right of collective bargaining through their own union of their own choosing, so that fraudulent company unions cannot chisel, and the continued abolition of child labor, the new deal might as well never have been started and carried so far toward general success and prosperity; and if the processing tax levied under the A. A. A. is thrown out, as the cotton manufacturers are trying to do, to make for themselves the additional 4.2 cents per pound on raw cotton purchased and processed, denying that benefit to the producer, the cotton producer, the wheat, hog, and corn producers, will again be bankrupt; and thus both labor and producer will have no purchasing power and there would soon be chaos in the country again.

For that reason, my dear friend, I cannot agree with the well-intentioned point of view and recommendation in your welcome letter. I want to fix it so that labor must be treated with human justice by those who will otherwise oppress it, just as you and the Humble do not oppress, and so that producer is not robbed for the benefit of manufacturer or anybody else. Then we will have justice and general prosperity and universal buying power, with consequent happiness in the land. Surely industry itself will vastly profit by this just course, with contented labor and with contented producers and general prosperity, rather than a short period with exorbitant dividends taken out of the blood and sweat of the producer and labor.

Your mind and your heart and my mind and my heart want the same results, which is justice and protection for capital and justice and protection for labor and producer. The difference is that because you and your good money are just I suppose you think industry as a whole are just toward labor and producer, when the indisputable evidence, after studying it for 2 years in its minute details, shows me that the weak must be protected from industry as a whole, for they do oppress it, they do underpay it, they do overwork it, they do turn it out on the streets to starve when they desire, and they do employ their fake company unions as a pretense of a real union to deal with as to wages and hours of labor and working conditions, and do fire men without mercy and unjustly if they do not kneel down and obey.

Mine is an awful responsibility, Mr. Powell. If I could look at matters as a politician, thinking first of myself, I would have far less trouble; but I have to think and feel and act as I have the mind and heart and resolution. And I have given you in substance the reasons why I am going to do all I can to perfect [7780] section 7 (a) to safeguard the just rights of labor against the inhuman greed of all too many in industry who exploit labor.

I hope this does not result in any breach between you and me, because I like you and feel friendly toward you, but I must follow the right as I see the right, agreeing when I can agree and differing when I must.

With kind regards and best wishes, sincerely yours,

JOE H. EAGLE.

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74TH CONGRESS
1ST SESSION

S. 1958

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1935

Referred to the Committee on Labor

AN ACT

To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND DECLARATION OF POLICY

SECTION 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of ownership and out of numerous other modern industrial conditions, impairs and affects commerce by creating variations and instability in wage rates and working conditions within and

between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity between production and consumption, reducing the amount of commerce, and tending to produce and aggravate recurrent business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial unrest which burden and affect commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce

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and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

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DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

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(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points

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in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

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(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be

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appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

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(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation

of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as

amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the

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Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in The District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regula-

tions as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712),

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as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual em-

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ployee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the

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record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part

the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place

and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor prac-

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tice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice,

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then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and

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shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the

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failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judg-

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ment and decree shall be final, except that the same shal be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 39 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such tem-

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porary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

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(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

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(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdic-

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tion to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in

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question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting

forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

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LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (l) and (m) of the Act approved June 7, 1934, entitled " An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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SEC. 16. This Act may be cited as the "National Labor Relations Act."

Passed the Senate May 13 (calendar day, May 16), 1935.

Attest: EDWIN A. HALSEY,
Secretary.

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Union Calendar No. 325

74TH CONGRESS
1ST SESSION

H. R. 7978

[Report No. 969]

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 1935

Mr. CONNERY introduced the following bill; which was referred to the Committee on Labor and ordered to be printed

MAY 20, 1935

Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

A BILL

To promote equality of bargaining power between employers and employees, to diminish the causes of *labor* disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND DECLARATION OF POLICY

SECTION 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of ownership and out of numerous other modern industrial conditions, impairs and affects commerce by creating variations and instability in wage rates and working conditions within

and between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity between production and consumption, reducing the amount of commerce, and tending to produce and aggravate recurrent business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.

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The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial unrest which burden and affect commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

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DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse

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(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor dis-

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putes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created in the Department of Labor a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors

shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall

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succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws, but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation

of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board

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with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

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SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

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(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to

encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to

rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant

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to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the

court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear

in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged

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in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then

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the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and

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shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence,

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shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judg-

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ment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such tem-

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porary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically

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ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

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(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdic-

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tion to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in

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question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting

forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

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LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

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74TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 969

NATIONAL LABOR RELATIONS BOARD

MAY 20, 1935.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONNERY, from the Committee on Labor, submitted the following

REPORT

[To accompany H. R. 7978]

The Committee on Labor, to whom was referred the bill H. R. 7978, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

A bill (H. R. 6288) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, was referred to the Committee on Labor and was made the subject of extended hearings. H. R. 7978, a somewhat amended version of the original bill, conforms to the considered views of the committee after consideration of H. R. 6288, and H. R. 7978 is herewith favorably reported.

The provisions and objects of this bill have been subjected to preposterous exaggerations and misrepresentation. Various associations of employers have expressed unwonted solicitude for the rights of employees, which they profess to believe are jeopardized by the bill. But the bill is merely an amplification and further clarification of the principles enacted into law by the Railway Labor Act and by section 7 (a) of the National Industrial Recovery Act, with the addition of enforcement machinery of familiar pattern. Curiously, few opponents of the bill have had the hardihood to avow an opposition to the principles of section 7 (a); they take alarm, however, when a serious effort is proposed to enforce the mandate of that law.

Upon the passage of the National Industrial Recovery Act it was hailed by the President as giving to workers "a new charter of rights long sought and hitherto denied." Section 7 (a) provided:

> Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) that employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such

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representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

No special agency was provided by law with power to administer and enforce section 7 (a). Pursuant to his general authority in section 2 (a) of the National Industrial Recovery Act, the President created the National Labor Board, under the chairmanship of Senator Wagner, with power "to settle by mediation, conciliation, or arbitration all controversies between employers and employees which tend to impede the purposes of the National Industrial Recovery Act" (Executive Order No. 6511, Dec. 16, 1933); and to conduct elections among the employees for designation of representatives (Executive Orders No. 6580, Feb. 1, 1934, and No. 6612–A, Feb. 23, 1934).

All that the National Labor Board could do, if it found a violation of section 7 (a), was to report the case to the National Recovery Administration, which might take away the employer's "blue eagle", or to the Department of Justice, which was authorized to institute, de novo proceedings in equity or a criminal prosecution, under subsections (c) and (f) of section 3. The provision of section 3 (b), that violations of the codes (including the labor provisions of section 7 (a) embodied therein) shall be deemed unfair methods of competition within the meaining of the Federal Trade Commission Act, has in practice become a dead letter, probably because the Federal Trade Commission in justice to its other functions could not have undertaken the general enforcement of the codes.

In the first flush of national fervor that greeted the inauguration of the National Industrial Recovery Act, the National Labor Board was able, by moral rather than the legal authority, to accomplish a good deal in the interpretation and application of the section. But resistance to the law gradually stiffened, as reactionary employers got their second wind, and as the National Labor Board, by a series of fair interpretations of section 7 (a), made it clear that it was illegal for an employer to discharge or discriminate in any way against an employee because of his union affiliation or activities; that an employer must not interfere with the self-organization of employees by foisting upon them a plant organization or a "company union" which the employer might think best for them; that an employer must deal with the chosen representative of his employees, even though such representative may be an "outside" union; that the representative chosen by the majority of the employees in an appropriate unit is entitled to speak for all the employees in that unit in collective bargaining negotiations with the employer.

After several months of experience as chairman of the National Labor Board, Senator Wagner reported to the Congress last year that section 7 (a) could not be enforced unless a statutory board especially charged with its administration were given powers analogous to those of the Federal Trade Commission in preventing unfair trade practices. The so-called "Wagner bill", providing for such a board,

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was the subject of lengthy hearings by the Committee on Education and Labor of the Senate, but failed of passage in the pressure for adjournment. Congress did, however, make a gesture toward better

enforcement by the passage of Public Resolution 44, Seventy-third Congress, which gave the President express statutory authority to establish a board or boards "authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7 (a) of said act or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce."

But, apart from somewhat improved machinery for the conduct of elections, such boards established under the public resolution have all the weaknesses of the old National Labor Board in the matter of preventing and restraining violations of section 7 (a). An interesting contemporaneous commentary upon Public Resolution 44 recently found its way into the record of the Senate Munitions Investigating Committee. It is a letter written by the vice president of a large industrial corporation on the day the public resolution passed; which letter read in part as follows:

> My guess is Congress will today pass the joint resolution proposed as an alternate to the Wagner bill, and that will end for the time being at least, many of our troubles in that respect.
>
> Personally, I view the passage of the joint resolution with equanimity. It means that temporary measures which cannot last more than a year will be substituted for the permanent legislation proposed in the original Wagner bill. I do not believe that there will ever be given as good a chance for the passage of the Wagner Act as exists now, and the trade is a mighty good compromise.
>
> I have read carefully the joint resolution, and my personal opinion is that it is not going to bother us very much. For one thing, it would be necessary, if the newly formulated boards are to order supervised elections in our plants, that they first set aside as invalid the elections just completed. I do not think this can be done.
>
> If in 1935 our elections should occur in the second half of June rather than the first half, the Board would automatically be legislated out of existence before that date. If they try to horn in on us in any situation in the meantime, I think we have our fences pretty securely set up.
>
> Therefore, and for other reasons, I am in favor of compromising by not opposing the passage of the joint resolution. This, of course, is my personal opinion. I have not yet had a chance to clear it with our people here.

This prophesy that the public resolution "is not going to bother us very much" has to a large extent been verified by the experience of the past year. On June 29, 1934, pursuant to the public resolution, the President by Executive order created the National Labor Relations Board. This Board consisted originally of Loyd K. Garrison, dean of the University of Wisconsin Law School, chairman; Harry A. Millis, chairman of the department of economics at the University of Chicago; and Edwin S. Smith, formerly Massachusetts Commissioner of Labor and Industries. In October 1934 Mr. Garrison was succeeded as chairman by Francis Biddle, Esq., of Philadelphia. The National Labor Relations Board, following the lead of its predecessor, the National Labor Board, has enriched the body of labor law by a notable series of decisions interpreting and applying section 7 (a). Its decisions and those of its regional boards have received some measure of compliance by the acquiescence of employers involved; but in

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the crucial cases of recalcitrant employers the Board has been up against a stone wall of legal obstacle.

This has been true both in cases where the Board found violation of section 7 (a) and in cases where it ordered elections, as Chairman Biddle frankly testified in the hearings before this committee. A brief

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recitation of the course of procedings in both types of cases will make clear why this has been so.

When complaint is made to the board of a violation of section 7 (a), the evidence is heard and transcribed by the proper regional board established by the National Labor Relations Board. The board has no power to subpena witnesses or administer oaths. If the employer chooses to ignore the hearing, he can do so with impunity except that his "blue eagle" may be put in jeopardy by the subsequent action of the National Recovery Administration. If the regional board finds a violation of section 7 (a), and the employer fails to comply with its recommendation for appropriate restitution, the case is referred to the National Labor Relations Board, which reviews the record, usually upon hearing in Washington. If the National Labor Relations Board confirms the finding of violation, it publishes its findings of fact and announces that unless the employer in default makes proper restitution, it will refer the case to the Compliance Division of the National Recovery Administration, and to other agencies of the Government.

At this point there is no legal compulsion upon the employer to comply with the Board's decision. Suppose he refuses to comply. The Board then transmits the case to the National Recovery Administration, which, though it is bound by the President's Executive order to accept the Board's findings of fact as final, nevertheless has a discretion whether to deprive the employer of the N. R. A. insignia as recommended by the Board. Assuming that the National Recovery Administration decides to remove the Blue Eagle, compliance is by no means assured. The nature of the business may be such that the deprivation of the Blue Eagle has only a negligible effect, in which case the employer may still ignore the decision. If, however, the possession of the N. R. A. insignia is of substantial value to the particular employer, he may apply to the Supreme Court of the District of Columbia for an injunction to restrain the National Recovery Administration from acting to deprive him of the right to display such insignia. These injunction suits are becoming almost a routine procedure. To date, none of them has gone to hearing on the merits. Of course, the National Labor Relations Board does not control this litigation.

When the Board refers a case to the Department of Justice, the most glaring defect in the present procedure is that the record made up by the Board goes for naught, and weeks or more after the alleged violation the Department must prepare the case for court, de novo. The Department does not go into court on the record before the Board to enforce the decision of the Board; indeed the Board's findings of fact have not even prima facie weight in the subsequent proceedings. Furthermore, due to the lack of power in the Board to subpena witnesses and documents, the Department in many cases finds it necessary to make extensive investigations before instituting legal proceed-

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ings. The stark fact is that after 2 years of section 7 (a) the Government has succeeded in getting in the courts only 4 cases for enforcement, 2 being proceedings in equity and 2 criminal proceedings; and only 1 of these cases (the *Weirton case*) has come to trial. While in the public mind the National Labor Relations Board is probably regarded as responsible for the enforcement of section 7 (a), the complete control of litigation is vested in the Department of Justice and its various United States attorneys throughout the country.

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Public Resolution 44 has not proved much more satisfactory even in its provisions which had some virtue over the preexisting law, namely the provisions for elections. By section 2 of the resolution, the Board is empowered, when it shall appear in the public interest, to order and conduct elections by secret ballot of any of the employees of any employer, to determine by what person, persons, or organization they desire to be represented. For the purposes of such elections the Board is authorized to order the production of documents and the appearance of witnesses to give testimony under oath. Any order issued by the Board under the authority of this section may be enforced or reviewed, as the case may be, by petition in the appropriate circuit court of appeals, following the procedure of the Federal Trade Commission Act.

The weakness of this procedure is that under the provision for review of election orders employers have a means of holding up the election for months by an application to the circuit court of appeals. Thus, in the *Firestone* and *Goodrich cases*, where the Board ordered elections in November 1934, the cases were not argued in the circuit court of appeals until April; decisions have not yet been rendered, and if the decisions happen to be favorable to the Board, the companies will undoubtedly appeal to the Supreme Court, with further inevitable delay. At the present time 10 cases for review of the Board's election orders are pending in the circuit courts of appeals. Only three have been argued and none have been decided.

The election is but a preliminary determination of fact, and there is no reason why employers should have an opportunity for court review prior to the holding of the election. The ability of employers to block elections has been productive of a large measure of industrial strife. When an employee organization has built up its membership to a point where it is entitled to be recognized as the representative of the employees for collective bargaining, and the employer refuses to accord such recognition, the union, unless an election can promptly be held to determine the choice of representation, runs the risk of impairment of strength by attrition and delay while the case is dragging on through the courts, or else is forced to call a strike to achieve recognition by its own economic power. Such strikes have been called when election orders of the National Labor Relations Board have been held up by court review.

In the *Firestone* and *Goodrich cases*, strikes were imminently threatened, and were only averted at the last minute by appeals to the men to await the decisions of the court on the election orders. The companies in these cases had made every preparation to wage a war with striking employees, rather than to submit to the orderly demo-

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cratic process of a governmentally supervised election to determine by whom the employees desired to be represented in collective bargaining negotiations.

The result of all this nonenforcement of section 7 (a) has been to breed a wide-spread and growing bitterness on the part of workers, who feel, with much justification, that they have been given fair words, but betrayed by the Government in the execution of its promises. Time after time employees who have sought to organize in pathetic reliance upon section 7 (a) have found themselves discriminated against by the employer, and appeals to the Government for redress have been in vain. If such a situation is allowed to continue

uncorrected, it will become a menace to industrial peace that cannot be exaggerated.

The time for appropriate action by the Congress is at hand, because on June 16, 1935, the National Industrial Recovery Act, and Public Resolution 44, Seventy-third Congress, expire by limitation. The Congress does not propose to withdraw the "new charter of rights" enacted in section 7 (a). The only honest thing for the Congress to do, therefore, is to provide adequate machinery for its enforcement, which is the object of the present bill.

Before proceeding to detailed comment on the bill, it may be helpful to state in broad outline the structure of the bill. Section 7 (a), as it now appears in the National Industrial Recovery Act, is amplified by the specific prohibition of certain unfair-labor practices, which by fair interpretation would constitute infringements upon the substantive rights of employees declared in section 7 (a). These prohibitions, and the substantive rights, are made applicable, to the extent of Congress's power under the commerce clause, to employers and employees irrespective of whether the industry in question is subject to a code of fair competition. The bill, therefore, rests upon a basis entirely independent of the National Recovery Administration, and should be considered on its merits quite apart from the ultimate disposition of the legislation affecting the National Recovery Administration. As a means of enforcing the provisions of the bill, there is created a permanent Board, with appropriate powers to make investigations of alleged violations of the law, to make orders, and to apply directly to the proper circuit court of appeals for enforcement of such orders, in the general manner provided for the enforcement of the orders of the Federal Trade Commission.

A detailed analysis of the bill follows:

FINDINGS AND DECLARATION OF POLICY

Section 1 states the underlying factual basis for the regulation provided in the bill. The committee wishes to emphasize particularly the objective of the bill to remove certain important sources of industrial unrest engendered, first, by the denial of the right of employees to organize and by the refusal of employers to accept the procedure of collective bargaining, and second, by failure to adjust wages, hours, and working conditions traceable to the absence of processes fundamental to the friendly adjustment of such disputes. Such unrest, as

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a matter of common knowledge and in judicial experience, leads to strikes and other forms of economic pressure which obstruct and burden the free flow of interstate and foreign commerce. In brief, such obstructions and burdens occur because of the stoppage of the flow of goods from and into the channels of such commerce, because of the effect on related or dependent industries or establishments, and because of the cessation of employment and wages, sometimes prostrating whole communities or otherwise impairing such commerce. By protecting the right of employees to organize and bargain collectively, and as a direct result by promoting just and appropriate practices for friendly adjustment, the bill eliminates many of the most important causes of unrest and strife, and so fosters, protects, and promotes the free flow of commerce, increases the amount thereof, and removes obstacles and obstructions thereto.

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The loss in wages, trade, and commerce from such strife has been enormous, as competent investigation demonstrates. Cf. Daugherty, Labor Problems in American Industry (1933) pp. 356, 358, 360; Douglas, An Analysis of Strike Statistics, Journal of American Statistical Association (September 1923) pp. 866–877; Monthly Labor Review, June 1932, pp. 1353–1362; W. I. King, The National Income and Its Purchasing Power (National Bureau of Economic Research, 1930) p. 56; United States Commissioner of Labor, Twenty-first Annual Report: Strikes and Lockouts (1906); Strikes and Lockouts in the United States, 1916–32; Monthly Labor Review, June 1933, pp. 1295–1304; Monthly Labor Review, July 1934, pp. 68–82; Monthly Labor Review, March 1935, pp. 677 ff.; United States Coal Commission, Labor Relations in the Bituminous Coal Industry (1923); National Association of Manufacturers, Convention Proceedings, 1926, p. 136; Hammond and Jenks, Great American Issues (1921) p. 99; N. Olds, The High Cost of Strikes (1921) p. 210; Fitch, Causes of Industrial Unrest (1924); Commons and Andrews, Principles of Labor Legislation (1920) p. 125; Congressional Record, vol. 78, pt. IV, p. 3443; Report on the Steel Strike of 1919; Commission of Inquiry for the Interchurch World Movement (1920); Report of the Anthracite Coal Strike Commission, United States Bureau of Labor, Bulletin No. 46 (1903); Labor Relations in the Bituminous Coal Industry, United States Coal Commission (1923); Report of the Board of Inquiry for the Cotton Textile Industry (1934) (appointed by President Roosevelt under Public Resolution No. 44).

Particularly has the attempt in section 7 (a) of the National Industrial Recovery Act to confer upon employees their charter of rights met with stubborn resistance by certain groups of employers. The absence of effective enforcement and election machinery, and the diffusion of responsibility and conflicting interpretations in regard to section 7 (a), have forced workers to resort to industrial warfare to gain the rights which by law were justly theirs. Throughout the period of the operation of the National Industrial Recovery Act, there existed or were impending serious conflicts burdening or threatening to burden the free flow of commerce in some of our largest industries, such as coal and copper mining, textile manufacturing, steel, automobiles, rubber, and shipping. These conflicts have had

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their counterpart in other industries as well, on perhaps a smaller scale, but equally bitter and fraught with dangerous possibilities.

The bill seeks, to borrow a phrase of the United States Supreme Court, "to make the appropriate collective action (of employees) an instrument of peace rather than of strife" (*Texas & New Orleans R. R. Co.* v. *Brotherhood* (281 U. S. 548)). The efficacy of such regulation is amply demonstrated by the history of labor relations on the railroads of the country and by the experience of the National War Labor Board during the great war. Chairman William M. Leiserson, of the National Mediation Board, has made some interesting observations upon the results that follow when the recognition of labor organizations ceases to be a fighting issue and the processes of collective bargaining become the habitual course of dealing. He said:

I think this is important to note, that so long as the employers question the right of the employees to hire personnel managers, a right that they have themselves, or sales agents, whichever you want to call them, then the employees have to fight for their rights. And a mild, gentlemanly sort does not get very far,

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and the type that survives is a more blustering, fighting kind of a representative of labor. And that is the type of people, the fighting kind, that survived in the railroad business, 20 years ago, when they had to fight for their right to do business on a cooperative basis.

As soon as the railroads began to say, "Sure, you have a right to represent the employees; let us sit down and make a contract or an agreement", and there are thousands of these agreements on the railroads, and from that time on the type of labor leader, or personnel manager, for the labor people was a more business-like type, and he is a good deal like the fellow on the employer's side.

DEFINITIONS

In section 2 are listed various definitions of terms. These definitions are for the most part self-explanatory. The committee wishes to emphasize the need for the recognition as expressed in subsections 3 and 9, that disputes may arise regardless of whether the disputants stand in the proximate relation of employer and employee, and that self-organization of employees may extend beyond a single plant or employer. This is so plain as to require no great elaboration. We may point simply to the words of Chief Justice Taft in the case of *American Steel Foundries* v. *Tri-City Central Trades Council* (257 U. S. 184, at 209):

They (labor unions) were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court. The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the community united because in the competition between employers they are, bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild.

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This statement is a sufficient answer to those who, with questionable disinterestedness, proclaim that rugged individualism is the great boon of the American workman; or that there is something "un-American" in a movement by workers to pool their economic strength in a type of labor organization most effective in approximating the economic power of their employers, namely, in so-called "outside unions", thereby establishing that "equality of position between the parties in which liberty of contract begins." While the bill does not require organization along such lines, and indeed makes no distinction between such organizations and others limited by the free choice of the workers to the boundaries of a particular plant or employer, it is imperative that employees be permitted so to organize, and that unfair labor practices taking in workers and labor organizations beyond the scope of a single plant be regarded as within the purview of the bill.

The definitions in subsections 6 and 7 are intended as the basic jurisdictional definitions, as used in their appropriate setting in sections 9 and 10 The bill is based squarely on the power of Congress

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to regulate commerce among the several States and with foreign nations. It does not apply to controversies or practices of purely local significance which do not presently or potentially burden or obstruct the free flow of such commerce.

NATIONAL LABOR RELATIONS BOARD

Section 3: This section establishes a nonpartisan board of three members appointed by the President by and with the advice and consent of the Senate. The committee has departed from S. 1958, the companion Senate bill, as reported out of the Senate Committee on Education and Labor, by providing that the Board shall be "created in the Department of Labor" instead of being established "as an independent agency in the executive branch of the Government."

The committee does not intend, by this change, to subject the Board to the jurisdiction of the Secretary of Labor in respect of its decisions, policies, budget, or personnel An amendment offered by the Secretary of Labor, requiring that the Board's appointments of employees shall be subject to the approval of the Secretary, was not accepted by the committee. We recognize the necessity of establishing a board with independence and dignity, in order that men of high caliber may be persuaded to serve upon it, and in order to give it a national prestige adequate to the important functions conferred upon it While it is convenient to locate the Board in the Department which deals with labor problems, this nominal connection will not impair the independence of the Board, which will be free to administer the statute without accountability except to Congress and the courts.

For the information of the House, we insert letters from the Secretary of Labor and the Chairman of the National Labor Relations Board, expressing their respective views on this point.

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LABOR DEPARTMENT,
Washington, May 13, 1935.

Hon. WILLIAM P. CONNERY, Jr.,
House of Representatives, Washington, D. C.

MY DEAR MR. CONGRESSMAN: I have your letter of May 10 enclosing a copy of H. R. 7978, your bill "to promote equality of bargaining power between employers and employees, to diminish the cause of labor disputes, to create a National Labor Relations Board, and for other purposes." As you know, I am deeply interested in the success of this legislation, and therefore, was very pleased to learn that the House Committee on Labor had voted to report the bill favorably.

The bill which your committee has approved embodies the principles of the measure introduced by you earlier in the session, the principal objectives of which I commended in my testimony before your committee. Briefly summed up, it proposes to write into the statute law of the United States the legal right of collective bargaining, to clarify that right by precise definition, and to provide machinery for its enforcement by creating a new National Labor Relations Board, vested with quasi-judicial powers.

I am very grateful to your committee for the careful consideration which it accorded to my testimony when I appeared before it, and I note that several of the suggestions I made at that time have been incorporated in the present text of the bill. One of the most important of these changes has been the revision of section 3 (a), so that in its present form it makes the National Labor Relations Board a part of the Department of Labor. Although I believe that the judicial independence of the Board should be insured, by making its decisions subject to review only in the courts, I think it would have been unwise to have recommended a bill creating the Board as an entirely separate agency dissociated from all the permanent executive departments.

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Your bill recognizes the importance of constant integration of the problems of collective bargaining with other labor problems, which is essential if the Department and the Board are to have the greatest possible understanding of the ramifications of their decisions in the field of industrial relations. Despite any restrictions which legislation might define, there would always be pressure upon a labor board to engage in conciliation and research. If the Board was separate this would mean an unnecessary duplication of functions already performed by the Department of Labor. Moreover, your bill, by providing for a unified administrative structure, guards against the confusion produced in the public mind by an increase in governmental agencies, and brings the Board more closely within the sphere of the problems of Government which ordinarily come to the attention of the President and Cabinet.

Moreover, it seems to me that your bill tends to make the proposed Board more judicial in character than would be possible were it an independent agency whose attention would be subject to distraction from specific cases by the temptation to strengthen its prestige through educational and administrative activities. A court is free from such temptation because the groove of its activity is so well defined that it can ignore all propaganda in an administration and devote its entire time to the quiet unimpassioned performance of the judicial processes. Anyone interested in making the proposed labor board as much as possible like a court should favor provisions restricting the scope of its activities to actual cases rather than to encourage it to enter the disconcerting tasks of administration. I am not sure that your bill goes as far as it might in relieving the Board of administrative responsibilities, for it charges the Board with the duty of making all the appointments to its own staff without the advice and consent of the head of the Department (sec. 4 (a)), and the task of reporting directly each year to the President and Congress (sec. 3 (c)). It would seem to me that these duties are possibly administrative in character and might consistently be given to the Secretary of Labor.

The other changes which your committee has made in the original draft also impress me favorably, particularly the omission of the section giving Federal district courts jurisdiction of unfair labor practices. I am glad that you concur with me in thinking that this section would have been productive of a welter of conflicting decisions, and that greater promise of uniform interpretation of the law will result from confining original jurisdiction to the Board or its subordinate agencies. I also feel that section 10 (c), defining the Board's procedure, considerably clarifies the phraseology of the original section. The redrafting of section

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9 (a) dealing with the troublesome question of majority rule and the rights of minority groups also strengthens the bill by preventing any questions of minority representation being raised. The original wording was not altogether clear on this point.

Sincerely yours,

FRANCES PERKINS.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., May 17, 1935.

Hon. WILLIAM P. CONNERY, Jr.,
House Office Building, Washington, D. C.

MY DEAR MR. CONGRESSMAN: In answer to your favor of the 10th, enclosing a copy of H. R. 7978, national labor relations bill, I note that this bill is identical with Senator Wagner's bill as it came out of the Senate Committee on Education and Labor, with the exception of section 3 (a) of the House bill. The language in the Senate bill is: "There is hereby created as an independent agency in the executive branch of the Government." The language of the House bill reads: "There is hereby created in the Department of Labor." Otherwise the two bills are identical.

We are of opinion that the amendment proposed by your committee is distinctly harmful to the general purposes of the bill. It may be a matter of doubt what are the implications of the unexplained phrase "created in the Department of labor." Were it not for the fact that your committee declined to accept one of the amendments proposed by the Secretary of Labor specifically subjecting to the approval of the Secretary the Board's appointment of employees, it might have been assumed that putting the Board "in the Department of Labor" carried with it automatic control by the Secretary over personnel. The phrase "created in the Department of Labor" might also carry the implication of budg-

etary control, which inevitably, though indirectly, enables the Secretary to influence the policy of the Board. Believing as we do that the independence of the Board should be established upon an unquestionable basis, we favor the unequivocal Senate version creating the Board "as an independent agency in the executive branch of the Government."

The value and success of any quasi-judicial board dealing with labor relations lies first and foremost in its independence and impartiality. After all, although the bill deals with the rights of labor, for the success of the machinery contemplated by the act it must in the long run have the confidence of industry and of the public at large. In our view it is in derogation of such independence and such impartiality to attach the Board to any department in the executive branch of the Government, and particularly to a department whose function in fact and in the public view is to look after the interests of labor.

The Board is to administer an act of Congress laying down a specific policy. If the Board is subject to the control of the Secretary of Labor as to personnel and budget, there will be an inevitable tendency to conform the administrative policies of the Board to the policies of the particular administration in power.

Where Congress has defined a policy and created an administrative board to carry out that policy, it has with marked consistency recognized that the board so created should be appointed for comparatively long terms of office and be free of control by the executive departments or by any particular administration. The arguments advanced for putting the Board in the Department of Labor would, if accepted by the Congress, have resulted in putting the Interstate Commerce Commission, the Federal Trade Commission, the Communications Commission in the Department of Commerce, and the Reconstruction Finance Corporation in the Treasury Department, instead of their being given an independent status. A similar observation may be made with reference to the Securities Exchange Commission and the National Mediation Board. It is of profound significance that the four outstanding permanent administrative agencies created by the last Congress to effectuate declared congressional policies were established as independent agencies; these are the Securities Exchange Commission, the Communications Commission, the Federal Housing Administration, and the National Mediation Board. Considering the specific quasi-judicial functions of the proposed National Labor Relations Board, there are even stronger reasons

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why it should have the prestige of independent status, than there were for establishing the National Mediation Board, to quote the words of its Organic Act, "as an independent agency in the executive branch of the Government."

It may be further observed that the multiplication of the functions of Cabinet officers has already proceeded to such a point that the practical supervision of any further agencies set up by the Congress, if entrusted to the departments, would necessarily be exercised by subordinates, themselves often overworked, and often not intimately acquainted with the special problems.

We wish to emphasize the essential difference between mediation and conciliation in adjusting disputes over wage and hour demands, and the work of the National Labor Relations Board in handling 7 (a) cases under the present law, or the work of the proposed new board in handling complaints that an employer has been guilty of unfair labor practices under the pending legislation. Wages and hours, apart from minimum standards prescribed by the codes, are a matter of give and take, in which conciliation serves a useful function. But the rights of labor under section 7 (a), or under the Wagner-Connery bill, are written into the law to be enforced, not to be bargained about or compromised. When a complaint of law violation is presented to the National Labor Relations Board or one of its regional boards, it is the function of the Board to see that the law is vindicated. Compliance with the law is often obtained without the necessity of formal hearings, or after hearing and before enforcement processes are involved; but obtaining such compliance is quite different from the mediation which is the function of the Conciliation Service of the Department in settling disputes about wages and working conditions.

As Senator Wagner said in his testimony before the Senate Committee on Education and Labor:

"The atmosphere of compromise and adaptation is perfectly suited to the settlement of disputes concerning hours and wages where shifting scales are fitting to particular conditions. But it is unsuited to section 7 (a) which Congress intended for universal application, not universal modification. The practical effect of letting each disputant bargain and haggle about what section 7 (a) means is that the weakest groups which need its basic protection most receive it the least."

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The National Labor Relations Board, as set up by Executive order of June 29 1934, though it was directed to make its reports to the President through the Secretary of Labor, and directed not to duplicate the mediatory and statistical work of the Department, has nevertheless been, in its administration of section 7 (a) and in its control of its own personnel and expenditures, an agency independent of the Department. This independence has not resulted in the duplication of work which the Secretary fears as likely to result from the bill as it passed the Senate. The Board has taken pains not to encroach upon the work of the conciliation service of the Department.

It has proceeded under a harmonious working arrangement with the Department, specifying the respective functions of the board and the Department. It has found no difficulty, indeed has had the warmest cooperation of the Department, in the matter of making use of the Department's statistical and research agencies and other facilities. To make it abundantly clear that there shall be no duplication of work, the Senate committee inserted an amendment, which was entirely agreeable to the board, forbidding the board to appoint persons to engage in mediation, conciliation, or statistical work when the services of such persons may be obtained from the Department of Labor. That provision also appears in section 4 of H. R. 7978. A similar provision in section 1 (b) of the Executive order under which the board now operates has proven entirely satisfactory.

The fact that the administrative and quasi-judicial functions of the board should be kept distinct from the work of mediation and conciliation is an added reason why its functions should not be transferred to the jurisdiction of the Secretary of Labor. The tendency toward confusion of the two functions is enhanced by confiding them both to the Labor Department.

We conclude that every consideration of congressional precedent in like cases, of efficiency, of giving the board an assured independence in its judicial and administrative work, requires that the board be established as an independent agency in the executive branch of the Government.

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With this one exception noted, the National Labor Relations Board heartily endorses H. R. 7978 as a statesmanlike contribution to healthy labor relations and industrial peace.

Sincerely yours,

FRANCIS BIDDLE, *Chairman.*

Section 4: This section deals with matters such as the appointment and salaries of members of the Board, the appointment of personnel by the Board, the transfer of the personnel and records of the old Board established on June 29, 1934, by Executive Order No. 6763, pursuant to Public Resolution No. 44. It is also made clear that orders and proceedings in the courts pursuant to the public resolution, to which the old Board is a party, shall be continued by the Board in its discretion, in order that the important questions of law therein involved may be brought to final determination in the highest courts. In connection with this section, the committee wishes to emphasize two points.

First, there is no conflict with or duplication of the functions of the Department of Labor in its statistical and conciliation work. The bill expressly provides that:

Nothing in this act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

Conciliation or mediation is desirable in disputes or differences as to wages and hours or conditions of work, where friendly adjustment requires give and take and the compromising of conflicting views.

The work of the Board and its agents or agencies, on the other hand, is quasi-judicial in character, dealing with the investigation and determination of charges of unfair labor practices as defined in the bill, and questions of representation for the purposes of collective bargaining. This of course does not preclude securing compliance, either by a stipulation procedure or otherwise, prior to formal hearing

or application to the courts. But the Board and its agents or agencies are required to carry out the declared will of Congress as provided in this definite legislation; the law must have application in all cases, and must not be haggled about or compromised because of the exigency of a particular situation or the weakness of a particular employee group as against a more powerful employer. Under the bill it is contemplated that the Board, its agents or agencies, will not confuse the quasi-judicial nature of their function by intruding upon the regular work of the Conciliation Service of the Department of Labor.

Second, the section authorizes the Board to appoint regional directors and to establish such regional, local, or other agencies as may from time to time be needed. The Board itself cannot be expected in the ordinary case to travel to the scene of dispute; nor can it be expected that the parties or their witnesses must be brought before the Board at the center of government in Washington. Upon the efficiency of permanently established, compensated regional officers and regional agencies operating under the direction of the Board at the source of dispute, will thus depend in an important measure the effective administration of the law.

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Section 5: This is a provision commonly incorporated in similar statutes. The importance of holding inquiries necessary to the functions of the Board at places convenient to their proper and expeditious handling, has already been pointed out above.

Section 6: This is a common provision authorizing the Board to make, amend, and rescind such rules and regulations as may be found necessary to implement and carry out the provisions of the bill. It is important to note that the rules will be effective only upon due publication, so that there may be no claims of doubt or ignorance as to their content.

RIGHTS OF EMPLOYEES

The first unfair labor practice in section 8, taken in conjunction with the rights stated in section 7, is merely a restatement of a portion of the language of section 7 (a) of the National Industrial Recovery Act, quoted previously in this report. Similar pronouncements have been made in the Railway Labor Act of 1934, and in other acts of Congress (48 Stat. 1185, sec. 2 (Railway Labor Act of 1934); 44 Stat. 577, sec. 2 (Railway Labor Act of 1926); 47 Stat. 70, sec. 2 (Norris Anti-injunction Act); 47 Stat. 1481, secs. 77 (p) and (q) (Bankruptcy Act); 48 Stat. 214, sec. 7 (e) (Emergency Transportation Act)).

Objection is constantly made that the bill is limited to unfair labor practices by mployers. It is contended that the bill should prohibit "anyone", including of course, an employee or labor organization, from interfering with, restraining or coercing employees in the exercise of these rights, and that without such provision, the bill is "unfair", "one-sided", and would lead to the domination of industry by organized labor. But it is clear that corresponding to the right of employees to be free from interference, etc., by their employer in their organizational activities, is the right of the other party to the negotiations, the employer, to be free in his designation of representatives for that purpose. The Railway Labor Act contai ıs such a reciprocal provision that neither employers nor employees shall in

any way interfere with, influence, or coerce the other in their choice of representatives (sec. 2 (3)), but does not deal with organizational activities by employees or labor organizations. Such a reciprocal provision, forbidding employees to interfere with the right of employers to choose their representatives for collective bargaining, would be a merely formal requirement, ignoring the realities of the situation. In the light of common knowledge, it can hardly be said that this right of employers needs protection under this bill. Organizations of employers in trade associations and in national organizations of such trade associations, have blanketed the country; the integration of business into larger corporate units and the formation of such trade associations has not been stopped by the antitrust laws.

Furthermore, a provision forbidding employees to interfere with the right of employers to choose their representatives would not satisfy the opponents of the bill. What is really sought is a legal straitjacket upon labor organizations, on the specious theory that such organizations have no more legitimate concern in the organization of

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employees than have the employers themselves. But the bill seeks to redress an inequality of bargaining power by forbidding employers to interfere with the development of employee organization, thereby removing one of the issues most provocative of industrial strife and bringing about a general acceptance of the orderly procedure of collective bargaining under circumstances in which the employer cannot trade upon the economic weakness of his employees.

The report on S. 1958 by the Senate Committee on Education and Labor deals fully and conclusively with this topic. We incorporate a portion of that report:

There is an even more important reason why there should be no insertion in the bill of any provision against coercion of employees by employees or labor organizations. Courts have held a great variety of activities to constitute "coercion": A threat to strike; a refusal to work on material of nonunion manufacture; circularization of banners and publications; picketing; even peaceful persuasion. In some courts, closed-shop agreements or strikes for such agreements are condemned as "coercive." Thus, to prohibit employees from "coercing" their own side would not merely outlaw the undesirable activities which the word connotes to the layman, but would raise in Federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organizations, ghosts which it was supposed Congress had laid low in the Norris-LaGuardia Act.

Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police-court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. The Norris-LaGuardia Act does not deny to employers relief in the Federal courts against fraud, violence, or threats of violence (see 29 U. S. C., sec. 104 (e) and (i)).

Racketeering under the guise of labor-union activity has been successfully enjoined under the antitrust laws when it affected interstate commerce. The latest case along these lines is *United States* v. *Local No. 167 et al.* (291 U. S. 293).

In addition, the procedure set up in this bill is not nearly so well suited as is existing law to the prevention of such fraud and violence. Deliberations and hearings by the Board, followed by orders that must be referred to the Federal courts for enforcement, are methods of procedure that could never be sufficiently expeditious to be effective in this connection.

The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board in every case with countercharges and recriminations that would prevent it from doing the task that needs to be done. There is hardly a labor controversy in which during the heat of excitement statements are not made on both sides which, in the hands of

hostile or unsympathetic courts, might be construed to come under the common-law definition of fraud, which in some States extends even to misstatements innocently made, but without reasonable investigation. And if the Board should decide to dismiss such charges, its order of dismissal would be subject to review in the Federal courts.

Proposals such as these under discussion are not new. They were suggested when section 7 (a) of the National Industrial Recovery Act was up for discussion, and when the 1934 amendments to the Railway Labor Act were before Congress. In neither instance did they command the support of Congress.

The succeeding unfair labor practices are intended to amplify and state more specifically certain types of interference and restraint that experience has proved require such amplification and specification. These specific practices, as enumerated in subsections (2), (3), (4), and (5), are not intended to limit in any way the interpretation of the general provisions of subsection (1).

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The second unfair labor practice prohibits an employer from dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it. It is provided, however, that subject to rules and regulations made and published by the Board, an employer may permit employees to confer with him during working hours without loss of time or pay. This section has its counterpart in provisions of other Federal statutes, such as the Railway Labor Act amendments of 1934, section 2; the Bankruptcy Act amendments of 1933 and 1934; and the Emergency Transportation Act, section 7 (e).

It is reliably estimated that about 70 percent of the company unions now in existence were established subsequent to the passage of section 7 (a) of the National Industrial Recovery Act. According to the semiannual report of the National Labor Relations Board to the President, for the period, July 9, 1934, to January 9, 1935, such company unions were a primary or attendant cause of the disputes in about 30 percent of the cases heard by the National Board; and the great majority of such company unions had become active in contemplation of or contemporaneously with a trade-union organizing movement, or in close relation to a strike. Employer-promoted unions are most prevalent in the larger plants and industries, where the bargaining power of the individual worker is very weak, and, curiously enough, where the managements have hitherto been opposed to organization of their workers. It is of the essence that the right of employees to self-organization and to join or assist labor organizations should not be reduced to a mockery by the imposition of employer-controlled labor organizations, particularly where such organizations are limited to the employees of the particular employer and have no potential economic strength.

Nothing in the bill prohibits the formation of a company union, if by that term is meant an organization of workers confined by their own volition to the boundries of a particular plant or employer. What is intended is to make such organization the free choice of the workers, and not a choice dictated by forms of interference which are weighty precisely because of the existence of the employer-employee relationship. The forms which such interference may take have been disclosed in the experience of the labor boards engaged in the investigation of charges of violation of section 7 (a) during the past 2 years. These are of course matters for decision on the facts of the individual case. The most commonly recognized forms of interference have

been financial support, participation in the formation of the constitution or bylaws or in the internal management of the company union, espionage, and the like. An extremely common form of interference is the provision in the constitution or bylaws of company unions that changes may not be made except with the consent of the employer. The prohibition of financial support is particularly justified. Collective bargaining is reduced to a sham when the employer sits on both sides of the table by supporting a particular organization with which he deals, by the payment of added compensation to their representatives, or by permitting such representatives to conduct organizational

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work among the employees during working hours without deduction of pay.

How often it has been said by employers who object to "outside unions" that their representatives "agitate" among employees during working hours and that employees affiliated with such organizations "disturb" other employees. No action could be more provocative of resentment, unrest, and strife than these forms of financial support. On this subject it is pertinent to quote a portion of the opinion of the National Labor Relations Board in *Matter of B. F. Goodrich Co.* (1 N. L. R. B. 181, 184 (1934)):

> Another feature of the plan which raises a serious problem is the fact that it is financed by the company, and that, in particular, the company pays extra salaries to the employee representatives under the plan. At the time when the plan was initiated by the company there existed a group of employees within the plant, we do not know how numerous, who favored affiliation with an outside union as their designated agency for collective bargaining. We may assume that there were also at the plant employees who preferred a plant organization. At this juncture we believe that the company interfered with the self-organization of its employees when it threw the great weight of its financial support in favor of the group of employees who wanted a plant organization, to the competitive disadvantage of the group of employees who wanted representation by an outside union. In effect this was a form of discrimination which handicapped the efforts of one group of employees in promoting their ideas on self-organization. The tendency of the thing at the time of the inauguration of the plan was corrupting and the continuance of financial support by the company at the present time is corrupting. This is particularly true of the payment of salaries to representatives. However single-minded the elected representatives under the plan might be in their devotion to the interests of the employees, the provision for paying extra salaries to the approximately 150 employee representatives causes their independence of employer domination to be highly dubious. It is improper for the company to influence the choice of employees in the manner described above, which involves in substance, the subsidizing of an active group of propagandists among the employees for the type of employee representation the company would prefer to deal with.

The specific practices to which we have adverted have been recognized by our highest courts as forms of interference. In *Texas & New Orleans R. R. Co.* v. *Brotherhood of Railway Clerks* (281 U. S. 548, 560), Chief Justice Hughes, writing for a unanimous Court, stated in a decision under the Railway Labor Act of 1926:

> The circumstances of the soliciting of authorizations and memberships on behalf of the association, the fact that employees of the railroad company who were active in promoting the development of the Association were permitted to devote their time to that enterprise without deduction from their pay, the charge to the railroad company of expenses incurred in recruiting members of the association, the reports made to the railroad company of the progress of these efforts, and the discharge from the service of the railroad company of leading representatives of the brotherhood and the cancelation of their passes, gave support, despite the attempted justification of these proceedings, to the conclusion of the courts below that the railroad company and its officers were actually engaged in promoting the organization of the association in the interest of the company

> and in opposition to the brotherhood, and that these activities constituted an actual interferences with the liberty of the clerical employees in the selection of their representatives.

It should be noted finally that the employer can be said to "dominate" the "formation or administration of a labor organization" where several of these forms of interference exist in combination, and he is able thereby to corrupt or override completely the will of employees.

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The third unfair labor practice prohibits an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization. This spells out in greater detail the provisions of section 7 (a) prohibiting yellow-dog contracts and interference with self-organization. This interference may be present in a variety of situations in this connection, such as discrimination in discharge, lay-off, demotion or transfer, hire, forced resignation, or divison of work; in reinstatement or hire following a technical change in corporate structure, a strike, lock-out, temporary lay-off, or a transfer of the plant.

Nothing in this subsection prohibits interference with the normal exercise of the right of employers to select their employees or to discharge them. All that is intended is that the employer shall not by discriminatory treatment in hire or tenure of employment or terms or conditions of employment, interfere with the exercise by employees of their right to organize and choose representatives. It is for this reason that the employer is prohibited from encouraging or discouraging membership in any labor organization by such discrimination.

The proviso to the third unfair labor practice, dealing with the making of closed-shop agreements, has been widely misrepresented. The proviso does not impose a closed shop on all industry; it does not give new legal sanctions to the closed shop. All that it does is to eliminate the doubts and misconstructions in regard to the effect of section 7 (a) upon closed-shop agreements, and the possible repretition of such doubts and misconstructions under this bill, by providing that nothing in the bill or in section 7 (a) or in any other statute of the United States shall illegalize a closed-shop agreement between an employer and a labor organization, provided such organization has not been established, maintained, or assisted by any action defined in the bill as an unfair labor practice and is the choice of a majority of the employees, as provided in section 9 (a), in the appropriate collective bargaining unit covered by the agreement when made. The bill does nothing to legalize the closed-shop agreement in the States where it may be illegal; but the committee is confident that it would not be the desire of Congress to enact a general ban upon closed-shop agreements in the States where they are legal. And if should be emphasized that no closed shop may be effected unless it is assented to by the employer.

The fourth unfair labor practice relates to discharge or other discrimination against an employee because he has filed charges or given testimony under the bill.

The fifth unfair labor practice, regarding the refusal to bargain collectively, rounds out the essential purpose of the bill to encourage collective bargaining and the making of agreements.

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REPRESENTATIVES AND ELECTIONS

Majority rule.—Section 9 (a) incorporates the majority rule principle, that representatives designated for the purposes of collective bargaining by the majority of employees in the appropriate unit shall be the exclusive representatives of all the employees in that unit

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"for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." As a necessary corollary it is an act of interference (under sec. 8 (1)) for an employer, after representatives have been so designated by the majority, to negotiate with individuals or minority groups in their own behalf on the basic subjects of collective bargaining.

The misleading propaganda directed against this principle has been incredible. The underlying purposes of the majority rule principle are simple and just. As has frequently been stated, collective bargaining is not an end in itself; it is a means to an end, and that end is the making of collective agreements stabilizing employment relations for a period of time, with results advantageous both to the worker and the employer. There cannot be two or more basic agreements applicable to workers in a given unit; this is virtually conceded on all sides. If the employer should fail to give equally advantageous terms to nonmembers of the labor organization negotiating the agreement, there would immediately result a marked increase in the membership of that labor organization. On the other hand, if better terms were given to nonmembers, this would give rise to bitterness and strife, and a wholly unworkable arrangement whereby men performing comparable duties were paid according to different scales of wages and hours. Clearly then, there must be one basic scale, and it must apply to all.

It would be undesirable if this basic scale should result from negotiation between the employer and unorganized individuals or a minority group, for the agreement probably would not command the assent of the majority and hence would not have the stability which is one of the chief advantages of collective bargaining. If, however, the company should undertake to deal with each group separately, there would result the conditions pointed out by the present National Labor Relations Board in its decision in the *Matter of Houde Engineering Corporation* (1 N. L. R. B. 35 (Aug. 30, 1934)):

> It seems clear that the company's policy of dealing first with one group and then with the other resulted, whether intentionally or not, in defeating the object of the statute. In the first place, the company's policy inevitably produced a certain amount of rivalry, suspicion, and friction between the leaders of the committees. * * * Secondly, the company's policy, by enabling it to favor one organization at the expense of the other, and thus to check at will the growth of either organization, was calculated to confuse the employees, to make them uncertain which organization they should from time to time adhere to, and to maintain a permanent and artificial division in the ranks.

Speaking of the company's suggested alternative that it deal with a composite committee made up of representatives of the two major conflicting groups, supplemented by other individual employees, the Board pointed out:

> This vision of an employer dealing with a divided committee and calling in individual employees to assist the company in arriving at a decision is certainly far from what section 7 (a) must have contemplated in guaranteeing the right of collective bargaining. But whether or not the workers' representation by a com-

> posite committee would weaken their voice and confuse their counsels in negotiating with the employer, in the end whatever collective agreement might be reached would have to be satisfactory to the majority within the committee. Hence the majority representatives would still control, and the only difference

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between this and the traditional method of bargaining with the majority alone would be that the suggestions of the minority would be advanced in the presence of the majority. The employer would ordinarily gain nothing from this arrangement if the two groups were united, and if they were not united he would gain only what he has no right to ask for, namely, dissention and rivalry. * * *

Since the agreement made will apply to all, the minority group and individual workers are given all the advantages of united action. And they are given added protection in various respects. First, the proviso to section 9 (a) expressly states that "any individual employee or a group of employees shall have the right at any time to present grievances to their employer." And the majority rule does not preclude adjustment in individual cases of matters outside the scope of the basic agreement. Second, agreements more favorable to the majority than to the minority are impossible, for under section 8 (3) any discrimination is outlawed which tends to "encourage or discourage membership in any labor organization." Nor does the majority rule in itself establish a closed shop or encourage a closed shop, that being a matter of negotiation and agreement requiring the assent of the employer, as discussed above.

In view of what has been said, it is apparent that those who oppose majority rule in effect oppose collective bargaining and the making of collection agreements as the end thereof, by seeking to create conditions making such accomplishment impossible. Those who profess to favor collective bargaining and the general purposes of this bill should favor majority rule, which is the only practical method of achieving the desired ends. Majority rule is at the basis of our democratic institutions. The same organized employer groups who now oppose majority rule for workers have publicly announced their adherence to it as applied to the formulation of codes of fair competition. It has been the experience of the National Labor Relations Board in cases before it that employers opposing majority rule wished only to keep their responsibilities diffused and to maintain in the picture a complacent minority group, typically a company union, so that no collective agreement might be reached at all. This motivation has been brought to the surface in specific cases where employers refuse to recognize the rule when trade unions represented the majority, although in the course of the previous history of the disputes in question, when the opposing employer-promoted company unions had a majority, the employers had invoked the majority rule as the excuse for their refusal to deal with the same trade unions. Thus in *Matter of Guide Lamp Corporation* (1 N. L. R. B. 48 (1934)), the Board said:

* * * The company has not always felt the same consideration it now expresses for minority groups. In October 1933 the union addressed a letter to the company requesting an opportunity to meet and bargain collectively.

The company's letter in reply stated that the Guide Employees' Association represented 70 percent of the employees and concluded:

"If we begin the practice of negotiation with each group which presents itself, we will not be complying with the provisions of the National Recovery Act, and a great deal of confusion would result. If there is any complaint or grievance which you wish to present, we shall be glad to consider it, but any negotiation or collective bargaining must be with the committee representing the great majority of our employees."

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Many precedents for majority rule in labor relation may be cited. Thus it has been applied by the National War Labor Board, the Railway Labor Board, the National Labor Board, and by the three boards established under Public Resolution 44: the National Steel Labor Relations Board, the National Textile Labor Relations Board, and the National Labor Relations Board. The rule was expressly written into the statute books by Congress in the Railway Labor Act of 1934: "Employees shall have the right to bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act" (sec. 2 (4)).

Section 9 (b) provides that the Board shall determine whether, in order to effectuate the policy of the bill (as expressed in sec. 1), the unit appropriate for the purposes of collective bargaining shall be the craft unit, plant unit, employer unit, or other unit. This matter is obviously one for determination in each individual case, and the only possible workable arrangement is to authorize the impartial governmental agency, the Board, to make that determination. There is a similar provision in the Railway Labor Act of 1934 (sec. 2 (9); 2 (4)).

Elections.—Section 9 (c) makes provision for elections to be conducted by the Board or its agents or agencies to ascertain the representatives of employees. The question will ordinarily arise as between two or more bona fide organizations competing to represent the employees, but the authority granted here is broad enough to take in the not infrequent case where only one such organized group is pressing for recognition, and its claim of representation is challenged. It is, of course, contemplated that pursuant to its authority under section 6 (a), the Board will make and publish appropriate rules governing the conduct of elections and determining who may participate therein.

The committee adheres, with the present National Labor Relations Board, to the common belief that the device of an election in a democratic society has, among other virtues, that of allaying strife, not provoking it. Obviously the Board should not be required to wait until there is a strike or immediate threat of strike. Where there are contending factions of doubtful or unknown strength, or the representation claims of the only organized group in the bargaining unit are challenged, there exists that potentiality of strife which the bill is designed to eliminate by the establishment of this machinery for prompt, governmentally supervised elections.

As previously stated in this report, the efficacy of Public Resolution 44 has been substantially impaired by the provision for court review of election orders prior to the holding of the election. Section 9 (d) of the bill makes clear that there is to be no court review prior to the holding of the election, and provides an exclusive, complete, and adequate remedy whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an election or other investigation pursuant to section 9 (c). The hearing required to be held in any such investigation provides an appropriate safeguard and opportunity to be heard. Since the certifi-

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cation and the record of the investigation are required to be included in the transcript of the entire record filed pursuant to section 10 (e) or (f), the Board's actions and determinations of fact and law in

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regard thereto will be subject to the same court review as is provided for its other determinations under sections 10 (b) and 10 (c).

PREVENTION OF UNFAIR LABOR PRACTICES

The Board is empowered, according to the procedure provided in section 10, to prevent any person from engaging in any unfair labor practice listed in section 8 "affecting commerce", as that term is defined in section 2 (7). This power is vested exclusively in the Board and is not to be affected by any other means of adjustment or prevention. The Board is thus made the paramount agency for dealing with the unfair labor practices described in the bill.

The procedure provided is analogous to that in the Federal Trade Commission Act (sec. 5) and is familiar to all students of administrative law. Provisions are made to assure the basic protections against arbitrary action which are generally regarded as prerequisite to due process of law. The provision that the technical rules of evidence shall not be controlling is but a restatement of the law generally recognized as applicable in comparable administrative tribunals. The court review afforded aggrieved parties under subsection (f) gives an adequate opportunity for review of the procedure before the Board. It is contemplated, of course, that the Board will establish rules governing procedure in greater detail, in such manner as will be conducive to the proper dispatch of business and to the ends of justice.

If upon all the testimony taken the Board decides that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board, according to the usual practice of similar administrative bodies, states its findings of fact and issues an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action as will effectuate the policies of the bill; i. e., as defined in section 1, to encourage the practice of collective bargaining and to protect the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing. The orders will of course be adapted to the needs of the individual case; they may include such matters as refraining from collective bargaining with a minority group, recognition of the agency chosen by the majority for the purposes of collective bargaining, posting of appropriate bulletins, refraining from bargaining with an organization corrupted by unfair labor practices. The most frequent form of affirmative action required in cases of this type is specifically provided for, i. e., the reinstatement of employees with or without back pay, as the circumstances dictate. No private right of action is contemplated. Essentially the unfair labor practices listed are matters of public concern, by their nature and consequences, present or potential; the proceeding is in the name of the Board, upon the Board's formal complaint. The form of injunctive and affirmative order is necessary to effectuate

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the purpose of the bill to remove obstructions to interstate commerce which are by the law declared to be detrimental to the public weal.

The form and nature of the Board's order will of course be subject to court review, along with the other determinations and actions of the Board in the case, both as to the facts and the law, in the manner provided in subsection (e) or (f).

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If the person complained of fails or neglects to obey the Board's order, it is provided that the Board shall be empowered to petition any appropriate Circuit Court of Appeals of the United States for the enforcement of such order, and in the event that all the circuit courts to which application may be made are in vacation, the Board may in its discretion apply to the district court. Express provision is made for the granting of appropriate temporary relief or a restraining order, and the court is empowered to enter upon the pleadings, testimony, and proceedings set forth in the transcript a decree enforcing, modifying or setting aside in whole or in part the order of the Board.

According to a similar procedure, any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in the appropriate circuit court of appeals, or in the Court of Appeals of the District of Columbia. It is intended here to give the party aggrieved a full, expeditious, and exclusive method of review in one proceeding after a final order is made. Until such final order is made the party is not injured, and cannot be heard to complain, as has been held in cases under the Federal Trade Commission Act.

INVESTIGATORY POWERS

For the purpose of all hearings and investigations which in the opinion of the Board are necessary and proper for the exercise of the powers vested in it by section 9 and section 10, dealing with investigations of questions concerning the representation of employees and unfair labor practices, there is granted in section 11 the subpena powers typically provided for similar administrative bodies, without which their work would be ineffectual. The section grants no roving commission, but is limited to the exercise of powers and functions embodied in sections 9 and 10. Any member of the Board is empowered to issue subpenas requiring the attendance and testimony of witnesses (including, of course, the person complained of), and the production of any evidence that relates to matters under investigation or in question. In case of contumacy or refusal to obey a subpena, the Board may make application to the appropriate district court, which is empowered to issue orders requiring obedience, and to punish for contempt if necessary.

Section 11 (4) provides for the appropriate service of all process issued by the courts to which application may be made under section 11 (2) or sections 10 (e) or (f). This provision is comparable to that found, for example, in Securities Exchange Act, section 21 (c) and 27; Clayton Act, section 12; and Petroleum Control Act of 1935, section 10 (b).

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Under section 12 any person who shall willfully resist, prevent, impede or interfere with any member of the Board or any of its agents or agencies in the performance of the duties pursuant to the bill shall be punished by a fine not in excess of $5,000 or by imprisonment not in excess of 1 year, or both. This guarantees that the Board will be protected in the conduct of its work, and, that tampering with records, interfering with witnesses, or the doing of other acts of like nature will be punishable as a criminal offense. The section of course can have no application to the exercise of the right to strike.

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LIMITATIONS

Section 13 is designed to preclude the interpretation of any provision in the bill so as to "interfere with or impede or diminish in any way the right to strike." Public Resolution 44, passed by a unanimous Congress last year, likewise provided (sec. 6):

> Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities.

Section 15 contains the usual separability provision.

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MINORITY VIEW

At the very outset I want to make my position clear. I am wholeheartedly in favor of this bill. I believe it to be a great step for the protection of the rights of organized labor of the United States; and irrespective of whether or not the following suggestions are adopted I shall vote for the bill.

I find myself unable to agree with the decision of the committee to affiliate the National Labor Relations Board with the Department of Labor. It is clearly immaterial whether this affiliation is accomplished merely by providing generally that the Board shall be located in the Department of Labor, or by providing in detail that the Secretary of Labor shall control the personnel, the regional agencies, and the budget of the Board. Regardless of variations in language, if the Board is placed within the Department, the Secretary of Labor will control the purse strings, and that control will be the decisive factor in determining the extent and the character of the personnel, the nature of the work done, and the administrative set-up of the Board, both in Washington and throughout the country. This in turn will be determinative of the major policies of the Board, as I shall presently discuss. On this issue there can be no compromise; either the Board must be completely independent or it must be reduced to the level of a departmental bureau.

I should have thought that even without regard for the past history of the National Labor Relations Board and the testimony before this committee, both of which seem to me compelling upon this point, precedent alone would have induced the establishment of the Board as an independent agency. The Board is to be solely a quasi-judicial body with clearly defined and limited powers. Its policies are marked out precisely by the law. That such an agency should be free from any other executive branch of the Government has been the recog-

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nized policy of Congress. Ready examples are the Interstate Commerce Commission, the Federal Trade Commission, the Communications Commission, the Securities and Exchange Commission, the National Mediation Board, and agencies that are even less judicial in character, such as the Federal Housing Administration and the Reconstruction Finance Corporation. It seems strange that this committee, which has built up so fine a record in the interests of labor, should be grudgingly unwilling to establish for the protection of labor's most basic rights an agency as dignified and independent, and as likely to attain the prestige that flows from such independence, as those which have been established to protect the interests of other groups.

The vital need for the complete independence of a quasi-judicial board that must enforce the law has been best illustrated by the collapse of section 7 (a) of the Recovery Act. That famous section broke down, not so much because the Recovery Act into which it was written did not contain adequate enforcement provisions, but

because the actual enforcement of 7 (a) was tied up with the wrong agencies. The Labor Board, it is true, could make "decisions"; but actual enforcement rested with the National Recovery Administration and the Department of Justice. Since the N. R. A. had other functions, such as code making, etc., which required constant cultivation of friendly and conciliatory feelings between the N. R. A. and those with whom it had to deal, the N. R. A. has been forced repeatedly to compromise and bargain away the specific rights guaranteed by section 7 (a). And the Department of Justice likewise has been reluctant to act upon this touchy subject, because of entirely extrinsic consideration of government policy that should have had nothing to do with section 7 (a). The complete frustration of the present National Labor Relations Board has resulted from this very simple failure to maintain the traditional and tested division between quasi-judicial bodies on the one hand and the general work of executive departments tied up with the governmental policy of a particular administration, on the other.

This anomalous situation would be perpetuated by placing the National Labor Relations Board in the Department of Labor. The Department is an executive arm of the Government. The Secretary of Labor is an officer of a particular administration, and I say this from the long-range point of view, and with due regard for the abilities of the present Secretary. The Department is thus quickly susceptible to political repercussions, and it is charged with many administrative duties involving constant compromise between industry and government. Thus the Board would quickly be swallowed up in the general policies of the Department of Labor.

These difficulties are not answered at all by insisting that the judicial decisions of the National Labor Relations Board would not be subject to review by the Secretary of Labor or by any officer in the executive branch of the Government. If in fact the Board were to be independent in its actions, there would be no reason for anyone wanting to set it up in the Department of Labor. But that is not the case; the final "judicial decisions" are only a small part of the work of such a

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Board, and by control over other stages in the enforcement process the Department of Labor would be the final arbiter of the policies of the Board.

For example, to be effective in enforcement, the Board must control complaints of unfair labor practices from their very inception. Yet this would not be the case were the Board in the Department. It is quite true that the proponents of placing the Board in the Department insist that there should be no mediation or conciliation done by the Board. But that does not preclude the possibility of mediation of an unfair labor practice by the Conciliation Service of the Department before the Board would act. And in the long run, that would inevitably result from locating the Board in the Department, while its advent would be hastened by an administration unsympathetic toward labor. This is the very worst kind of confusion of conciliation and quasi-judicial work, not in that the Board will do both but that both will be used at successive stages in attempting to enforce the law.

What will result from such a procedure? Conciliation at the source will not build up the kind of records that the Board might later refer to the courts for enforcement. Compromise of the law at the outset will constantly plague the Government when the time comes to

vindicate the law. A wide variety of interpretations without any centralizing force will create uncertainty and distrust. The National Labor Relations Board will be called into operation only where there has been a record of failure rather than success; only when the prestige of the Government has already been impaired by the failure of its agencies. Moreover, the duplication of effort and the long delay before complaints of unfair practices finally reach the Board will wreak havoc upon workers' rights. The worker who is wronged must get help quickly if at all. The injury of the long delay can never be redressed. The occasion to protest by his own collective action, once let past, can never be recalled. These are not fancied evils; they are present now because of the very policies which I do not wish to see continued.

To prevent unfair labor practices, the National Labor Relations Board must have control of enforcement not at the end of the trail but from the very beginning. It must follow the procedure that is followed by the Federal Trade Commission in preventing unfair trade practices. No one would suggest, when there is a claim of an unfair trade practice, that there should first be mediation by the Department of Commerce and then action by the Commission in the event of failure.

In addition, if the Department of Labor is to control the first steps in regard to the prevention of unfair practices, it will have the discretion to cut enforcement off its sources. "Judicial independence" will do the Board no good as to cases that never reach it.

Thus the issue raised is a very narrow one. If the purpose of placing the National Labor Relations Board in the Department of Labor is that the Department and the Board shall function jointly to protect the rights guaranteed by section 7 (a), then the whole enforcement mechanism will collapse because of dispersion of responsibility and because of an overlapping of conciliation and judicial

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work. And if the Board should operate independently of the Department, it is unfair to make it subject to departmental control over budget and personnel.

In view of these major considerations, which have proved controlling in every other case where the Government has set up a quasi-judicial body, the point that there might be some overlapping of stastistical work by the Board and the Department of Labor is trivial and unrealistic. In fact, it is entirely appropriate to amend the bill, as has been done, to provide that the Board should not do any statistical work, mediation, or conciliation, when such services are available in the Department of Labor.

It should be repeated that the National Labor Relations Board is to be purely a quasi-judicial commission. Its prestige and efficacy must be grounded fundamentally in public approval and in equal confidence in its impartiality by Labor and Industry. If the Board is placed in the Department it will suffer ab initio from the suspicion that it is not a court, but an organ devoted solely to the interests of laboring groups. Far from helping labor, this will impair the work of the Board and render more difficult the sustaining of its supposedly impartial decisions by the Federal courts.

Finally, let me emphasize the paramount consideration that the inclusion of the Board in the Department of Labor will injure not only the Board, but the Department itself, and through it the interests of

labor. The Department was not established to handle all the industrial relation problems of the Government. It was not established to covet impartial or quasi-judicial functions, or to interpret laws of Congress. It was founded, as is too often forgotten now, as a department for labor, and to "foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment." There is more work of this type to be done than ever before and the Department is in no danger of lapsing into disuse if it is aware of its duties. I believe that labor would have fared better under the codes if the Department had remained true to its function as a militant organ for working people, rather than attempted to appear as a labor relations bureau of the Federal Government, representing all interests alike, and overzealous to guard itself against supposed encroachments. The efforts to secure control over an impartial quasi-judicial board is a definite step by the Department away from those activities which can make it most useful to the working people of America.

The Senate bill very wisely has made the Board an independent agency. The House should follow the Senate on this very vital matter.

I also find myself unable to agree with the committee in its exclusion of agricultural workers. It is a matter of plain fact that the worst conditions in the United States are the conditions among the agricultural workers. They have been brought to the public attention many times; for example, by the investigations of the National Child Labor Committee into the horrible conditions, especially as affecting

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children, in the beet-sugar fields. The complete denial of civil liberty and the reign of terror in the Imperial Valley have been the subject of investigation by Government agents. Last summer saw a protracted and heroic strike by the terribly exploited union workers in the fertile fields of Hardin County, Ohio, against their employers. These workers were organized in a federal local of the A. F. of L. They were victims of the usual type of oppression which was called to public attention in the press.

However, the most conclusive proof that there must be Federal action to protect the right of agricultural workers to organize is to be found in the situation in Arkansas. In that State, within the last year, there has come into being an admirable union of agricultural workers, the Southern Tenant Farmers Union. It has been incorporated under the laws of the State. Its immediate demands are entirely reasonable and its methods have been extraordinarily peaceful. Yet that union is at present holding no meetings on advice of its counsel who says that it cannot be protected from terroristic attacks. Armed plants have patrolled the roads looking for the principal organizers of the union. The president of the union, a former rural school teacher, was driven out of the county by threats of lynching. Members of the union have been beaten up. Some of them have been cast in jail from which they were ultimately delivered but only in one or two cases after they had been confined on trumped charges for 45 days. Meetings have been forcibly broken up. The lawyer for the union is C. T. Carpenter, one of the outstanding lawyers of the State of Arkansas. He was waited on by an armed mob one night in his own home. He met them at the door with a pistol in his hand. The mob left but not without firing shots at the house.

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What these people in Arkansas are organizing against is the most outrageous exploitation in America. The plantation system of itself is damnable. It combines the worst evils of feudalism and capitalism. The overseers on the plantations go armed.

A continuance of these conditions is preparing the way for a desperate revolt of virtual serfs. Unless the right to organize peacefully can be guaranteed we shall have a continuance of virtual slavery until the day of revolt. The union and the exploited victims of this system have shown an amazing willingness, or rather a deep-seated anxiety, to avoid bloodshed.

I, therefore, respectfully submit that there is not a single solitary reason why agricultural workers should not be included under the provisions of this bill. The same reasons urged for the adoption of this bill in behalf of the industrial workers are equally applicable in the case of the agricultural workers, in fact more so as their plight calls for immediate and prompt action.

VITO MARCANTONIO.

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CHANGES IN EXISTING LAW

The bill (H. R. 7978) does not repeal or amend, expressly any provision of law, but refers to several provisions of law which are set forth for the information of the House.

JOINT RESOLUTION To effectuate further the policy of the National Industrial Recovery Act

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to further effectuate the policy of title I of the National Industrial Recovery Act, and in the exercise of the powers therein and herein conferred, the President is authorized to establish a board or boards authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7a of said Act or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce, the salaries, compensation and expenses of the board or boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act.

SEC. 2. Any board so established is hereby empowered, when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees of any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize and to select their representatives for the purpose of collective bargaining as defined in section 7a of said Act and now incorporated herein.

For the purposes of such election such a board shall have the authority to order the production of such pertinent documents or the appearance of such witnesses to give testimony under oath, as it may deem necessary to carry out the provisions of this resolution. Any order issued by such a board under the authority of this section may, upon application of such board or upon petition of the person or persons to whom such order is directed, be enforced or reviewed, as the case may be, in the same manner, so far as applicable, as is provided in the case of an order of the Federal Trade Commission under the Federal Trade Commission Act.

SEC. 3. Any such board, with the approval of the President, may prescribe such rules and regulations as it deems necessary to carry out the provisions of this resolution with reference to the investigations authorized in section 1, and to assure freedom from coercion in respect to all elections.

SEC. 4. Any person who shall knowingly violate any rule or regulation authorized under section 3 of this resolution or impede or interfere with any member or agent of any board established under this resolution in the performance of his duties, shall be punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

SEC. 5. This resolution shall cease to be in effect, and any board or boards established hereunder shall cease to exist, on June 16, 1935, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 of the National Industrial Recovery Act has ended.

SEC. 6. Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities. [Joint Resolution of June 19, 1934.]

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[Judicial Code.] SEC. 239. In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, the court at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which instructions are desired for the proper decision of the cause; and thereupon the Supreme Court may either give binding instruc-

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tions on the questions and propositions certified or may require that the entire record in the cause be sent up for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there by writ of error or appeal.

[Judicial Code.] SEC. 240. (a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

(b) Any case in a circuit court of appeals where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against its validity, may, at the election of the party relying on such State statute, be taken to the Supreme Court for review on writ of error or appeal; but in that event a review on certiorari shall not be allowed at the instance of such party, and the review on such writ of error or appeal shall be restricted to an examination and decision of the Federal questions presented in the case.

(c) No judgment or decree of a circuit court of appeals or of the Court of Appeals of the District of Columbia shall be subject to review by the Supreme Court otherwise than as provided in this section.

(The writ of error referred to in the above sections has been abolished by the act of Jan. 31, 1928, 45 Stat. 54.)

* * * * * * *

AN ACT To amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

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Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

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(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

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Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complaintant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery or mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobdience of any officer of the court in respect to the writs, orders, or process of the court.

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SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

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SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(*d*) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed. [Act of March 23, 1932.]

* * * * * * *

[National Industrial Recovery Act] SEC. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

* * * * * * *

[Sec. 77B of the Bankruptcy Act] (l) No judge, debtor, or trustee acting under this section shall deny or in any way question the right of employees on the property under the jurisdiction of the judge, to join the labor organization of their choice, and it shall be unlawful for any judge, debtor, or trustee to interfere in any way with the organizations of employees, or to use funds under such jurisdic-

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tion, in maintaining so-called company unions, or to coerce employees in an effort to induce them to join or remain members of such company unions.

(m) No judge, debtor, or trustee acting under this section shall require any person seeking employment on the property under the jurisdiction of the judge to sign any contract or agreement promising to join or to refuse to join a labor organization; and if such contract has been enforced on the property prior to the property coming under the jurisdiction of said judge, then the judge, debtor, or trustee, as soon as the matter is called to his attention, shall notify the employees by an appropriate order that said contract has been discarded and is no longer binding on them in any way.

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Union Calendar No. 328

74TH CONGRESS
1ST SESSION

S. 1958

[Report No. 972]

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1935

Referred to the Committee on Labor

MAY 21, 1935

Reported with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italics]

AN ACT

To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND DECLARATION OF POLICY

SECTION 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of ownership and out of numerous other modern industrial conditions, impairs and affects commerce by creating variations and instability in wage rates and working conditions within and

between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity between production and consumption, reducing the amount of commerce, and tending to produce and aggravate recurrent business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of

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industrial unrest which burden and affect commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

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(6) The term "commerce" means trade, traffic, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created ~~as an independent agency in the executive branch of the Government~~ *in the Department of Labor* a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but

their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member

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whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation

of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as

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amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regula-

tions as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board may prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

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(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., *Supp. VII*, title 15,

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secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual em-

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ployee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant

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to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part

the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place

and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged

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in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice,

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then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and

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shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence,

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shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judg-

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ment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such tem-

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porary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifi-

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cally ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" ~~(U. S. C.,~~ *approved March 23, 1932* (*U. S. C., Supp. VII*, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary

and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of

contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person

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to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place

of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more

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than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., *Supp. VII*, title 15, sec. 707 (a)), as amended from time to time, or of section 77 (~~b~~) *B*, paragraphs (1) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application

of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Passed the Senate May 13 (calendar day, May 16), 1935.

Attest: EDWIN A. HALSEY,
Secretary.

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74TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 972

NATIONAL LABOR RELATIONS BOARD

MAY 21, 1935.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. CONNERY, from the Committee on Labor, submitted the following

REPORT

[To accompany S. 1958]

The Committee on Labor, to whom was referred the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, having had the same under consideration, report it back to the House with amendments and recommend that the bill, as amended, do pass.

The committee amendments are as follows:

On page 5, lines 17 and 18, strike out "as an independent agency in the executive branch of the Government" and insert in lieu thereof "in the Department of Labor".

On page 9, line 25, insert after "U. S. C.," the following: "Supp. VII,".

On page 17, line 17, strike out "(U. S. C.," and insert in lieu thereof "approved March 23, 1932 (U. S. C., Supp. VII,".

On page 21, line 7, insert after "U. S. C.," the following: "Supp. VII,".

On page 21, line 8, strike out "(b)" and insert in lieu thereof "B".

A bill (H. R. 6288) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, was referred to the Committee on Labor and was made the subject of extended hearings. H. R. 7978, a somewhat amended version of the original bill, conforms to the considered views of the committee after consideration of H. R. 6288, and was favorably reported yesterday. S. 1958 herewith favorably reported is the same as H. R. 7978, except for amendments correcting clerical errors.

The provisions and objects of this bill have been subjected to preposterous exaggerations and misrepresentation. Various associations of employers have expressed unwonted solicitude for the rights of employees, which they profess to believe are jeopardized by the bill. But the bill is merely an amplification and further clarification of the principles enacted into law by the Railway Labor Act and by

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section 7 (a) of the National Industrial Recovery Act, with the addition of enforcement machinery of familiar pattern. Curiously, few opponents of the bill have had the hardihood to avow an opposition to the principles of section 7 (a); they take alarm, however, when a serious effort is proposed to enforce the mandate of that law.

Upon the passage of the National Industrial Recovery Act it was hailed by the President as giving to workers "a new charter of rights long sought and hitherto denied." Section 7 (a) provided:

> Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That em-
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>
> ployees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

No special agency was provided by law with power to administer and enforce section 7 (a). Pursuant to his general authority in section 2 (a) of the National Industrial Recovery Act, the President created the National Labor Board, under the chairmanship of Senator Wagner, with power "to settle by mediation, conciliation, or arbitration all controversies between employers and employees which tend to impede the purposes of the National Industrial Recovery Act" (Executive Order No. 6511, Dec. 16, 1933); and to conduct elections among the employees for designation of representatives (Executive Orders No. 6580, Feb. 1, 1934, and No. 6612–A, Feb. 23, 1934).

All that the National Labor Board could do, if it found a violation of section 7 (a), was to report the case to the National Recovery Administration, which might take away the employer's "blue eagle", or to the Department of Justice, which was authorized to institute, de novo, proceedings in equity or a criminal prosecution, under subsections (c) and (f) of section 3. The provision of section 3 (b), that violations of the codes (including the labor provisions of section 7 (a) embodied therein) shall be deemed unfair methods of competition within the meaning of the Federal Trade Commission Act, has in practice become a dead letter, probably because the Federal Trade Commission in justice to its other functions could not have undertaken the general enforcement of the codes.

In the first flush of national fervor that greeted the inauguration of the National Industrial Recovery Act, the National Labor Board was able, by moral rather than the legal authority, to accomplish a good deal in the interpretation and application of the section. But resistance to the law gradually stiffened, as reactionary employers got their second wind, and as the National Labor Board, by a series of fair interpretations of section 7 (a), made it clear that it was illegal for an employer to discharge or discriminate in any way against an employee because of his union affiliation or activities; that an employer must not interfere with the self-organization of employees by foisting

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upon them a plant organization or a "company union" which the employer might think best for them; that an employer must deal with the chosen representative of his employees, even though such representative may be an "outside" union; that the representative chosen by the majority of the employees in an appropriate unit is entitled to speak for all the employees in that unit in collective bargaining negotiations with the employer.

After several months of experience as chairman of the National Labor Board, Senator Wagner reported to the Congress last year that section 7 (a) could not be enforced unless a statutory board especially charged with its administration were given powers analogous to those of the Federal Trade Commission in preventing unfair trade practices. The so-called "Wagner bill", providing for such a board, was the subject of lengthy hearings by the Committee on Education and Labor of the Senate, but failed of passage in the pressure for adjournment. Congress did, however, make a gesture toward better

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enforcement by the passage of Public Resolution 44, Seventy-third Congress, which gave the President express statutory authority to establish a board or boards "authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7 (a) of said act or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce."

But, apart from somewhat improved machinery for the conduct of elections, such boards established under the public resolution have all the weaknesses of the old National Labor Board in the matter of preventing and restraining violations of section 7 (a). An interesting contemporaneous commentary upon Public Resolution 44 recently found its way into the record of the Senate Munitions Investigating Committee. It is a letter written by the vice president of a large industrial corporation on the day the public resolution passed; which letter read in part as follows:

> My guess is Congress will today pass the joint resolution proposed as an alternate to the Wagner bill, and that will end for the time being at least, many of our troubles in that respect.
>
> Personally, I view the passage of the joint resolution with equanimity. It means that temporary measures which cannot last more than a year will be substituted for the permanent legislation proposed in the original Wagner bill. I do not believe that there will ever be given as good a chance for the passage of the Wagner Act as exists now, and the trade is a mighty good compromise.
>
> I have read carefully the joint resolution, and my personal opinion is that it is not going to bother us very much. For one thing, it would be necessary, if the newly formulated boards are to order supervised elections in our plants, that they first set aside as invalid the elections just completed. I do not think this can be done.
>
> If in 1935 our elections should occur in the second half of June rather than the first half, the Board would automatically be legislated out of existence before that date. If they try to horn in on us in any situation in the meantime, I think we have our fences pretty securely set up.
>
> Therefore, and for other reasons, I am in favor of compromising by not opposing the passage of the joint resolution. This, of course, is my personal opinion. I have not yet had a chance to clear it with our people here

This prophecy that the public resolution "is not going to bother us very much" has to a large extent been verified by the experience of

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the past year. On June 29, 1934, pursuant to the public resolution, the President by Executive order created the National Labor Relations Board. This Board consisted originally of Lloyd K. Garrison, dean of the University of Wisconsin Law School, chairman; Harry A. Millis, chairman of the department of economics at the University of Chicago; and Edwin S. Smith, formerly Massachusetts Commissioner of Labor and Industries. In October 1934 Mr. Garrison was succeeded as chairman by Francis Biddle, Esq., of Philadelphia. The National Labor Relations Board, following the lead of its predecessor, the National Labor Board, has enriched the body of labor law by a notable series of decisions interpreting and applying section 7 (a). Its decisions and those of its regional boards have received some measure of compliance by the acquiescence of employers involved; but in the crucial cases of recalcitrant employers the Board has been up against a stone wall of legal obstacle.

This has been true both in cases where the Board found violation of section 7 (a) and in cases where it ordered elections, as Chairman Biddle frankly testified in the hearings before this committee. A brief

recitation of the course of proceedings in both types of cases will make clear why this has been so.

When complaint is made to the board of a violation of section 7 (a), the evidence is heard and transcribed by the proper regional board established by the National Labor Relations Board. The board has no power to subpena witnesses or administer oaths. If the employer chooses to ignore the hearing, he can do so with impunity except that his "blue eagle" may be put in jeopardy by the subsequent action of the National Recovery Administration. If the regional board finds a violation of section 7 (a), and the employer fails to comply with its recommendation for appropriate restitution, the case is referred to the National Labor Relations Board, which reviews the record, usually upon hearing in Washington. If the National Labor Relations Board confirms the finding of violation it publishes its findings of fact and announces that unless the employer in default makes proper restitution, it will refer the case to the Compliance Division of the National Recovery Administration, and to other agencies of the Government.

At this point there is no legal compulsion upon the employer to comply with the Board's decision. Suppose he refuses to comply. The Board then transmits the case to the National Recovery Administration, which, though it is bound by the President's Executive order to accept the Board's findings of fact as final, nevertheless has a discretion whether to deprive the employer of the N. R. A. insignia as recommended by the Board. Assuming that the National Recovery Administration decides to remove the Blue Eagle, compliance is by no means assured. The nature of the business may be such that the deprivation of the Blue Eagle has only a negligible effect, in which case the employer may still ignore the decision. If, however, the possession of the N. R. A. insignia is of substantial value to the particular employer, he may apply to the Supreme Court of the District of Columbia for an injunction to restrain the National Recovery Administration from acting to deprive him of the right to display such insignia. These injunction suits are becoming almost a

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routine procedure. To date, none of them has gone to hearing on the merits. Of course, the National Labor Relations Board does not control this litigation.

When the Board refers a case to the Department of Justice, the most glaring defect in the present procedure is that the record made up by the Board goes for naught, and weeks or more after the alleged violation the Department must prepare the case for court, de novo. The Department does not go into court on the record before the Board to enforce the decision of the Board; indeed the Board's findings of fact have not even prima facie weight in the subsequent proceedings. Furthermore, due to the lack of power in the Board to subpena witnesses and documents, the Department in many cases finds it necessary to make extensive investigations before instituting legal proceedings. The stark fact is that after 2 years of section 7 (a) the Government has succeeded in getting in the courts only 4 cases for enforcement, 2 being proceedings in equity and 2 criminal proceedings; and only 1 of these cases (the *Weirton case*) has come to trial. While in the public mind the National Labor Relations Board is probably regarded as responsible for the enforcement of section 7 (a), the complete control of litigation is vested in the Department of Justice and its various United States attorneys throughout the country.

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Public Resolution 44 has not proved much more satisfactory even in its provisions which had some virtue over the preexisting law, namely the provisions for elections. By section 2 of the resolution, the Board is empowered, when it shall appear in the public interest, to order and conduct elections by secret ballot of any of the employees of any employer, to determine by what person, persons, or organization they desire to be represented. For the purposes of such elections the Board is authorized to order the production of documents and the appearance of witnesses to give testimony under oath. Any order issued by the Board under the authority of this section may be enforced or reviewed, as the case may be, by petition in the appropriate circuit court of appeals, following the procedure of the Federal Trade Commission Act.

The weakness of this procedure is that under the provision for review of election orders employers have a means of holding up the election for months by an application to the circuit court of appeals. Thus, in the *Firestone* and *Goodrich cases*, where the Board ordered elections in November 1934, the cases were not argued in the circuit court of appeals until April; decisions have not yet been rendered, and if the decisions happen to be favorable to the Board, the companies will undoubtedly appeal to the Supreme Court, with further inevitable delay. At the present time 10 cases for review of the Board's election orders are pending in the circuit courts of appeals. Only three have been argued and none have been decided.

The election is but a preliminary determination of fact, and there is no reason why employers should have an opportunity for court review prior to the holding of the election. The ability of employers to block elections has been productive of a large measure of industrial strife. When an employee organization has built up its membership to a point where it is entitled to be recognized as the representative

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of the employees for collective bargaining, and the employer refuses to accord such recognition, the union, unless an election can promptly be held to determine the choice of representation, runs the risk of impairment of strength by attrition and delay while the case is dragging on through the courts, or else is forced to call a strike to achieve recognition by its own economic power. Such strikes have been called when election orders of the National Labor Relations Board have been held up by court review.

In the *Firestone* and *Goodrich cases*, strikes were imminently threatened, and were only averted at the last minute by appeals to the men to await the decisions of the court on the election orders. The companies in these cases had made every preparation to wage a war with striking employees, rather than to submit to the orderly democratic process of a governmentally supervised election to determine by whom the employees desired to be represented in collective bargaining negotiations.

The result of all this nonenforcement of section 7 (a) has been to breed a wide-spread and growing bitterness on the part of workers, who feel, with much justification, that they have been given fair words, but betrayed by the Government in the execution of its promises. Time after time employees who have sought to organize in pathetic reliance upon section 7 (a) have found themselves discriminated against by the employer, and appeals to the Government for redress have been in vain. If such a situation is allowed to continue

uncorrected, it will become a menace to industrial peace that cannot be exaggerated.

The time for appropriate action by the Congress is at hand, because on June 16, 1935, the National Industrial Recovery Act, and Public Resolution 44, Seventy-third Congress, expire by limitation. The Congress does not propose to withdraw the "new charter of rights" enacted in section 7 (a). The only honest thing for the Congress to do, therefore, is to provide adequate machinery for its enforcement, which is the object of the present bill.

Before proceeding to detailed comment on the bill, it may be helpful to state in broad outline the structure of the bill. Section 7 (a), as it now appears in the National Industrial Recovery Act, is amplified by the specific prohibition of certain unfair-labor practices, which by fair interpretation would constitute infringements upon the substantive rights of employees declared in section 7 (a). These prohibitions, and the substantive rights, are made applicable, to the extent of Congress's power under the commerce clause, to employers and employees irrespective of whether the industry in question is subject to a code of fair competition. The bill, therefore, rests upon a basis entirely independent of the National Recovery Administration, and should be considered on its merits quite apart from the ultimate disposition of the legislation affecting the National Recovery Administration. As a means of enforcing the provisions of the bill, there is created a permanent Board, with appropriate powers to make investigations of alleged violations of the law, to make orders, and to apply directly to the proper circuit court of appeals for enforcement

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of such orders, in the general manner provided for the enforcement of the orders of the Federal Trade Commission.

A detailed analysis of the bill follows:

FINDINGS AND DECLARATION OF POLICY

Section 1 states the underlying factual basis for the regulation provided in the bill. The committee wishes to emphasize particularly the objective of the bill to remove certain important sources of industrial unrest engendered, first, by the denial of the right of employees to organize and by the refusal of employers to accept the procedure of collective bargaining, and second, by failure to adjust wages, hours, and working conditions traceable to the absence of processes fundamental to the friendly adjustment of such disputes. Such unrest, as a matter of common knowledge and in judicial experience, leads to strikes and other forms of economic pressure which obstruct and burden the free flow of interstate and foreign commerce. In brief, such obstructions and burdens occur because of the stoppage of the flow of goods from and into the channels of such commerce, because of the effect on related or dependent industries or establishments, and because of the cessation of employment and wages, sometimes prostrating whole communities or otherwise impairing such commerce. By protecting the right of employees to organize and bargain collectively, and as a direct result by promoting just and appropriate practices for friendly adjustment, the bill eliminates many of the most important causes of unrest and strife, and so fosters, protects, and promotes the free flow of commerce, increases the amount thereof, and removes obstacles and obstructions thereto.

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The loss in wages, trade, and commerce from such strife has been enormous, as competent investigation demonstrates. Cf. Daugherty, Labor Problems in American Industry (1933) pp. 356, 358, 360; Douglas, An Analysis of Strike Statistics, Journal of American Statistical Association (September 1923) pp. 866–877; Monthly Labor Review, June 1932, pp. 1353–1362; W. I. King, The National Income and Its Purchasing Power (National Bureau of Economic Research, 1930) p. 56; United States Commissioner of Labor, Twenty-first Annual Report: Strikes and Lockouts (1906); Strikes and Lockouts in the United States, 1916–32; Monthly Labor Review, June 1933, pp. 1295–1304; Monthly Labor Review, July 1934, pp. 68–82; Monthly Labor Review, March 1935, pp. 677 ff.; United States Coal Commission, Labor Relations in the Bituminous Coal Industry (1923); National Association of Manufacturers, Convention Proceedings, 1926, p. 136; Hammond and Jenks, Great American Issues (1921) p. 99; N. Olds, The High Cost of Strikes (1921) p. 210; Fitch, Causes of Industrial Unrest (1924); Commons and Andrews, Principles of Labor Legislation (1920) p. 125; Congressional Record, vol. 78, pt. IV, p. 3443; Report on the Steel Strike of 1919; Commission of Inquiry for the Interchurch World Movement (1920); Report of the Anthracite Coal Strike Commission, United States Bureau of Labor, Bulletin No. 46 (1903); Labor Relations in the Bituminous Coal Industry, United

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States Coal Commission (1923); Report of the Board of Inquiry for the Cotton Textile Industry (1934) (appointed by President Roosevelt under Public Resolution No. 44).

Particularly has the attempt in section 7 (a) of the National Industrial Recovery Act to confer upon employees their charter of rights met with stubborn resistance by certain groups of employers. The absence of effective enforcement and election machinery, and the diffusion of responsibility and conflicting interpretations in regard to section 7 (a), have forced workers to resort to industrial warfare to gain the rights which by law were justly theirs. Throughout the period of the operation of the National Industrial Recovery Act, there existed or were impending serious conflicts burdening or threatening to burden the free flow of commerce in some of our largest industries, such as coal and copper mining, textile manufacturing, steel, automobiles, rubber, and shipping. These conflicts have had their counterpart in other industries as well, on perhaps a smaller scale, but equally bitter and fraught with dangerous possibilities.

The bill seeks, to borrow a phrase of the United States Supreme Court, "to make the appropriate collective action (of employees) an instrument of peace rather than of strife" (*Texas & New Orleans R. R. Co.* v. *Brotherhood* (281 U. S. 548)). The efficacy of such regulation is amply demonstrated by the history of labor relations on the railroads of the country and by the experience of the National War Labor Board during the great war. Chairman William M. Leiserson, of the National Mediation Board, has made some interesting observations upon the results that follow when the recognition of labor organizations ceases to be a fighting issue and the processes of collective bargaining become the habitual course of dealing. He said:

> I think this is important to note, that so long as the employers question the right of the employees to hire personnel managers, a right that they have themselves, or sales agents, whichever you want to call them, then the employees have to fight for their rights. And a mild, gentlemanly sort does not get very far,
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> 8
>
> and the type that survives is a more blustering, fighting kind of a representative of labor. And that is the type of people, the fighting kind, that survived in the railroad business, 29 years ago, when they had to fight for their right to do business on a cooperative basis.
>
> As soon as the railroad began to say, "Sure, you have a right to represent the employees; let us sit down and make a contract or an agreement", and there are thousands of these agreements on the railroads, and from that time on the type of labor leader, or personnel manager for the labor people was a more business-like type, and he is a good deal like the fellow on the employer's side.

DEFINITIONS

In section 2 are listed various definitions of terms. These definitions are for the most part self-explanatory. The committee wishes to emphasize the need for the recognition as expressed in subsections 3 and 9, that disputes may arise regardless of whether the disputants stand in the proximate relation of employer and employee, and that self-organization of employees may extend beyond a single plant or employer. This is so plain as to require no great elaboration. We may point simply to the words of Chief Justice Taft in the case of

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American Steel Foundries v. *Tri-City Central Trades Council* (257 U. S. 184, at 209):

> They (labor unions) were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court. The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild.

This statement is a sufficient answer to those who, with questionable disinterestedness, proclaim that rugged individualism is the great boon of the American workman; or that there is something "un-American" in a movement by workers to pool their ecomonic strength in a type of labor organization most effective in approximating the economic power of their employers, namely, in so-called "outside unions", thereby establishing that "equality of position between the parties in which liberty of contract begins." While the bill does not require organization along such lines, and indeed makes no distinction between such organizations and others limited by the free choice of the workers to the boundaries of a particular plant or employer, it is imperative that employees be permitted so to organize, and that unfair labor practices taking in workers and labor organizations beyond the scope of a single plant be regarded as within the purview of the bill.

The definitions in subsections 6 and 7 are intended as the basic jurisdictional definitions, as used in their appropriate setting in sections 9 and 10. The bill is based squarely on the power of Congress

to regulate commerce among the several States and with foreign nations. It does not apply to contoroversies or practices of purely local significance which do not presently or potentially burden or obstruct the free flow of such commerce.

NATIONAL LABOR RELATIONS BOARD

Section 3: This section establishes a nonpartisan board of three members appointed by the President by and with the advice and consent of the Senate. The committee has departed from S. 1958, as it passed the Senate, by providing that the Board shall be "created in the Department of Labor" instead of being established "as an independent agency in the executive branch of the Government."

The committee does not intend, by this change, to subject the Board to the jurisdiction of the Secretary of Labor in respect of its decisions,

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policies, budget, or personnel. An amendment offered by the Secretary of Labor, requiring that the Board's appointments of employees shall be subject to the approval of the Secretary, was not accepted by the committee. We recognize the necessity of establishing a board with independence and dignity, in order that men of high caliber may be persuaded to serve upon it, and in order to give it a national prestige adequate to the important functions conferred upon it. While it is convenient to locate the Board in the Department which deals with labor problems, this nominal connection will not impair the independence of the Board, which will be free to administer the statute without accountability except to Congress and the courts.

For the information of the House, we insert letters from the Secretary of Labor and the Chairman of the National Labor Relations Board, expressing their respective views on this point.

LABOR DEPARTMENT,
Washington, May 13, 1935.

Hon. WILLIAM P. CONNERY, Jr.,
House of Representatives, Washington, D. C.

MY DEAR MR. CONGRESSMAN: I have your letter of May 10 enclosing a copy of H. R. 7978, your bill "to promote equality of bargaining power between employers and employees, to diminish the cause of labor disputes, to create a National Labor Relations Board, and for other purposes." As you know, I am deeply interested in the success of this legislation, and therefore, was very pleased to learn that the House Committee on Labor had voted to report the bill favorably.

The bill which your committee has approved embodies the principles of the measure introduced by you earlier in the session, the principal objectives of which I commended in my testimony before your committee. Briefly summed up, it proposes to write into the statute law of the United States the legal right of collective bargaining, to clarify that right by precise definition, and to provide machinery for its enforcement by creating a new National Labor Relations Board, vested with quasi-judicial powers.

I am very grateful to your committee for the careful consideration which it accorded to my testimony when I appeared before it, and I note that several of the suggestions I made at that time have been incorporated in the present text of the bill. One of the most important of these changes has been the revision of section 3 (a), so that in its present form it makes the National Labor Relations Board a part of the Department of Labor. Although I believe that the judicial independence of the Board should be insured, by making its decisions subject to review only in the courts, I think it would have been unwise to have recommended a bill creating the Board as an entirely separate agency dissociated from all the permanent executive departments.

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Your bill recognizes the importance of constant integration of the problems of collective bargaining with other labor problems, which is essential if the Department and the Board are to have the greatest possible understanding of the ramifications of their decisions in the field of industrial relations. Despite any restrictions which legislation might define, there would always be pressure upon a labor board to engage in conciliation and research. If the Board was separate this would mean an unnecessary duplication of functions already performed by the Department of Labor. Moreover, your bill, by providing for a unified administrative structure, guards against the confusion produced in the public mind by an increase in governmental agencies, and brings the Board more closely within the sphere of the problems of Government which ordinarily come to the attention of the President and Cabinet.

Moreover, it seems to me that your bill tends to make the proposed Board more judicial in character than would be possible were it an independent agency whose attention would be subject to distraction from specific cases by the temptation to strengthen its prestige through educational and administrative activities. A court is free from such temptation because the groove of its activity is so well

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defined that it can ignore all propaganda in an administration and devote its entire time to the quiet unimpassioned performance of the judicial processes. Anyone interested in making the proposed labor board as much as possible like a court should favor provisions restricting the scope of its activities to actual cases rather than to encourage it to enter the disconcerting tasks of administration. I am not sure that your bill goes as far as it might in relieving the Board of administrative responsibilities, for it charges the Board with the duty of making all the appointments to its own staff without the advice and consent of the head of the Department (sec. 4 (a)), and the task of reporting directly each year to the President and Congress (sec. 3 (c)). It would seem to me that these duties are possibly administrative in character and might consistently be given to the Secretary of Labor.

The other changes which your committee has made in the original draft also impress me favorably, particularly the omission of the section giving Federal district courts jurisdiction of unfair labor practices. I am glad that you concur with me in thinking that this section would have been productive of a welter of conflicting decisions, and that greater promise of uniform interpretation of the law will result from confining original jurisdiction to the Board or its subordinate agencies. I also feel that section 10 (c), defining the Board's procedure, considerably clarifies the phraseology of the original section. The redrafting of section 9 (a) dealing with the troublesome question of majority rule and the rights of minority groups also strengthens the bill by preventing any questions of minority representation being raised. The original wording was not altogether clear on this point.

Sincerely yours,

FRANCES PERKINS.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., May 17, 1935.

Hon. WILLIAM P. CONNERY, Jr.,
House Office Building, Washington, D. C.

MY DEAR MR. CONGRESSMAN: In answer to your favor of the 10th, enclosing a copy of H. R. 7978, national labor relations bill, I note that this bill is identical with Senator Wagner's bill as it came out of the Senate Committee on Education and Labor, with the exception of section 3 (a) of the House bill. The language in the Senate bill is: "There is hereby created as an independent agency in the executive branch of the Government." The language of the House bill reads: "There is hereby created in the Department of Labor." Otherwise the two bills are identical.

We are of opinion that the amendment proposed by your committee is distinctly harmful to the general purposes of the bill. It may be a matter of doubt what are the implications of the unexplained phrase "created in the Department of Labor." Were it not for the fact that your committee declined to accept one of the amendments proposed by the Secretary of Labor specifically subjecting to the approval of the Secretary the Board's appointment of employees, it might have been assumed that putting the Board "in the Department of Labor" carried with it automatic control by the Secretary over personnel. The phrase "created in the Department of Labor" might also carry the implication of budg-

etary control, which inevitably, though indirectly, enables the Secretary to influence the policy of the Board. Believing as we do that the independence of tne Board should be established upon an unquestionable basis, we favor the unequivocal Senate version creating the Board "as an independent agency in the executive branch of the Government."

The value and success of any quasi-judicial board dealing with labor relations lies first and foremost in its independence and impartiality. After all, although the bill deals with the rights of labor, for the success of the machinery contemplated by the act it must in the long run have the confidence of industry and of the public at large. In our view it is in derogation of such independence and such impartiality to attach the Board to any department in the executive branch of the Government, and particularly to a department whose function in fact and in the public view is to look after the interests of labor.

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The Board is to administer an act of Congress laying down a specific policy. If the Board is subject to the control of the Secretary of Labor as to personnel and budget, there will be an inevitable tendency to conform the administrative policies of the Board to the policies of the particular administration in power.

Where Congress has defined a policy and created an administrative board to carry out that policy, it has with marked consistency recognized that the board so created should be appointed for comparatively long terms of office and be free of control by the executive departments or by any particular administration. The arguments advanced for putting the Board in the Department of Labor would, if accepted by the Congress, have resulted in putting the Interstate Commerce Commission, the Federal Trade Commission, the Communications Commission in the Department of Commerce, and the Reconstruction Finance Corporation in the Treasury Department, instead of their being given an independent status. A similar observation may be made with reference to the Securities Exchange Commission and the National Mediation Board. It is of profound significance that the four outstanding permanent administrative agencies created by the last Congress to effectuate declared congressional policies were established as independent agencies; these are the Securities Exchange Commission, the Communications Commission, the Federal Housing Administration, and the National Mediation Board. Considering the specific quasi-judicial functions of the proposed National Labor Relations Board, there are even stronger reasons why it should have the prestige of independent status, than there were for establishing the National Mediation Board, to quote the words of its Organic Act. "as an independent agency in the executive branch of the Government."

It may be further observed that the multiplication of the functions of Cabinet officers has already proceeded to such a point that the practical supervision of any further agencies set up by the Congress, if entrusted to the departments, would necessarily be exercised by subordinates, themselves often overworked, and often not intimately acquainted with the special problems.

We wish to emphasize the essential difference between mediation and conciliation in adjusting disputes over wage and hour demands, and the work of the National Labor Relations Board in handling 7 (a) cases under the present law, or the work of the proposed new board in handling complaints that an employer has been guilty of unfair labor practices under the pending legislation. Wages and hours, apart from minimum standards prescribed by the codes, are a matter of give and take, in which conciliation serves a useful function. But the rights of labor under section 7 (a), or under the Wagner-Connery bill, are written into the law to be enforced, not to be bargained about or compromised. When a complaint of law violation is presented to the National Labor Relations Board or one of its regional boards, it is the function of the Board to see that the law is vindicated. Compliance with the law is often obtained without the necessity of formal hearings, or after hearing and before enforcement processes are involved; but obtaining such compliance is quite different from the mediation which is the function of the Conciliation Service of the Department in settling disputes about wages and working conditions.

As Senator Wagner said in his testimony before the Senate Committee on Education and Labor.

"The atmosphere of compromise and adaptation is perfectly suited to the settlement of disputes concerning hours and wages where shifting scales are fitting to particular conditions. But it is unsuited to section 7 (a) which Congress intended for universal application, not universal modification. The practical effect of letting each disputant bargain and haggle about what section 7 (a) means is that the weakest groups which need its basic protection most receive it the least."

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The National Labor Relations Board, as set up by Executive order of June 29, 1934, though it was directed to make its reports to the President through the Secretary of Labor, and directed not to duplicate the mediatory and statistical work of the Department, has nevertheless been, in its administration of section 7 (a) and in its control of its own personnel and expenditures, an agency independent of the Department. This independence has not resulted in the duplication of work which the Secretary fears as likely to result from the bill as it passed the Senate. The Board has taken pains not to encroach upon the work of the conciliation service of the Department.

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It has proceeded under a harmonious working arrangement with the Department, specifying the respective functions of the board and the Department. It has found no difficulty, indeed has had the warmest cooperation of the Department, in the matter of making use of the Department's statistical and research agencies and other facilities. To make it abundantly clear that there shall be no duplication of work, the Senate committee inserted an amendment, which was entirely agreeable to the board, forbidding the board to appoint persons to engage in mediation, conciliation, or statistical work when the services of such persons may be obtained from the Department of Labor. That provision also appears in section 4 of H. R. 7978. A similar provision in section 1 (b) of the Executive order under which the board now operates has proven entirely satisfactory.

The fact that the administrative and quasi-judicial functions of the board should be kept distinct from the work of mediation and conciliation is an added reason why its functions should not be transferred to the jurisdiction of the Secretary of Labor. The tendency toward confusion of the two functions is enhanced by confiding them both to the Labor Department.

We conclude that every consideration of congressional precedent in like cases, of efficiency, of giving the board an assured independence in its judicial and administrative work, requires that the board be established as an independent agency in the executive branch of the Government.

With this one exception noted, the National Labor Relations Board heartily endorses H. R. 7978 as a statesmanlike contribution to healthy labor relations and industrial peace.

Sincerely yours,

FRANCIS BIDDLE, *Chairman*

Section 4: This section deals with matters such as the appointment and salaries of members of the Board, the appointment of personnel by the Board, the transfer of the personnel and records of the old Board established on June 29, 1934, by Executive Order No. 6763, pursuant to Public Resolution No. 44. It is also made clear that orders and proceedings in the courts pursuant to the public resolution, to which the old Board is a party, shall be continued by the Board in its discretion, in order that the important questions of law therein involved may be brought to final determination in the highest courts. In connection with this section, the committee wishes to emphasize two points.

First, there is no conflict with or duplication of the functions of the Department of Labor in its statistical and conciliation work. The bill expressly provides that:

> Nothing in this act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

Conciliation or mediation is desirable in disputes or differences as to wages and hours or conditions of work, where friendly adjustment requires give and take and the compromising of conflicting views.

The work of the Board and its agents or agencies, on the other hand, is quasi-judicial in character, dealing with the investigation and determination of charges of unfair labor practices as defined in the bill, and questions of representation for the purposes of collective bargaining. This of course does not preclude securing compliance, either by a stipulation procedure or otherwise, prior to formal hearing

or application to the courts. But the Board and its agents or agencies are required to carry out the declared will of Congress as provided in this definite legislation; the law must have application in all cases, and must not be haggled about or compromised because of the

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exigency of a particular situation or the weakness of a particular employee group as against a more powerful employer. Under the bill it is contemplated that the Board, its agents or agencies, will not confuse the quasi-judicial nature of their function by intruding upon the regular work of the Conciliation Service of the Department of Labor.

Second, the section authorizes the Board to appoint regional directors and to establish such regional, local, or other agencies as may from time to time be needed. The Board itself cannot be expected in the ordinary case to travel to the scene of dispute; nor can it be expected that the parties or their witnesses must be brought before the Board at the center of government in Washington. Upon the efficiency of permanently established, compensated regional officers and regional agencies operating under the direction of the Board at the source of dispute, will thus depend in an important measure the effective administration of the law.

SECTION 5: This is a provision commonly incorporated in similar statutes. The importance of holding inquiries necessary to the functions of the Board at places convenient to their proper and expeditious handling, has already been pointed out above.

SECTION 6: This is a common provision authorizing the Board to make, amend, and rescind such rules and regulations as may be found necessary to implement and carry out the provisions of the bill. It is important to note that the rules will be effective only upon due publication, so that there may be no claims of doubt or ignorance as to their content.

RIGHTS OF EMPLOYEES

The first unfair labor practice in section 8, taken in conjunction with the rights stated in section 7, is merely a restatement of a portion of the language of section 7 (a) of the National Industrial Recovery Act, quoted previously in this report. Similar pronouncements have been made in the Railway Labor Act of 1934, and in other acts of Congress (48 Stat. 1185, sec. 2 (Railway Labor Act of 1934); 44 Stat. 577, sec. 2 (Railway Labor Act of 1926); 47 Stat. 70, sec. 2 (Norris Anti-injunction Act); 47 Stat. 1481, secs. 77 (p) and (q) (Bankruptcy Act); 48 Stat. 214, sec. 7 (e) (Emergency Transportation Act)).

Objection is constantly made that the bill is limited to unfair labor practices by employers. It is contended that the bill should prohibit "anyone", including of course, an employee or labor organization, from interfering with, restraining or coercing employees in the exercise of these rights, and that without such provision, the bill is "unfair", "one-sided", and would lead to the domination of industry by organized labor. But it is clear that corresponding to the right of employees to be free from interference, etc., by their employer in their organizational activities, is the right of the other party to the negotiations, the employer, to be free in his designation of representatives for that purpose. The Railway Labor Act contains such a reciprocal provision that neither employers nor employees shall in

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any way interfere with, influence, or coerce the other in their choice of representatives (sec. 2 (3)), but does not deal with organizational activities by employees or labor organizations. Such a reciprocal provision, forbidding employees to interfere with the right of employers to choose their representatives for collective bargaining, would be a merely formal requirement, ignoring the realities of the situation. In the light of common knowledge, it can hardly be said that this right of employers needs protection under this bill. Organizations of employers in trade associations and in national organizations of such trade associations, have blanketed the country; the integration of business into larger corporate units and the formation of such trade associations has not been stopped by the antitrust laws.

Furthermore, a provision forbidding employees to interfere with the right of employers to choose their representatives would not satisfy the opponents of the bill. What is really sought is a legal straitjacket upon labor organizations, on the specious theory that such organizations have no more legitimate concern in the organization of employees than have the employers themselves. But the bill seeks to redress an inequality of bargaining power by forbidding employers to interfere with the development of employee organization, thereby removing one of the issues most provocative of industrial strife and bringing about a general acceptance of the orderly procedure of collective bargaining under circumstances in which the employer cannot trade upon the economic weakness of his employees.

The report on S. 1958 by the Senate Committee on Education and Labor deals fully and conclusively with this topic. We incorporate a portion of that report:

> There is an even more important reason why there should be no insertion in the bill of any provision against coercion of employees by employees or labor organizations. Courts have held a great variety of activities to constitute "coercion": A threat to strike; a refusal to work on material of nonunion manufacture; circularization of banners and publications; picketing; even peaceful persuasion. In some courts, closed-shop agreements or strikes for such agreements are condemned as "coercive." Thus, to prohibit employees from "coercing" their own side would not merely outlaw the undesirable activities which the word connotes to the layman, but would raise in Federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organizations, ghosts which it was supposed Congress had laid low in the Norris-La Guardia Act.
>
> Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police-court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. The Norris-La Guardia Act does not deny to employers relief in the Federal courts against fraud, violence, or threats of violence (see 29 U. S. C., sec. 104 (e) and (i)).
>
> Racketeering under the guise of labor-union activity has been successfully enjoined under the antitrust laws when it affected interstate commerce. The latest case along these lines is *United States* v. *Local No. 167 et al.* (291 U. S. 293).
>
> In addition, the procedure set up in this bill is not nearly so well suited as is existing law to the prevention of such fraud and violence. Deliberations and hearings by the Board, followed by orders that must be referred to the Federal courts for enforcement, are methods of procedure that could never be sufficiently expeditious to be effective in this connection.

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The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board in every case with countercharges and recriminations that would prevent it from doing the task that needs to be done. There is hardly a labor controversy in which during the heat of excitement statements are not made on both sides which, in the hands of

hostile or unsympathetic courts, might be construed to come under the common-law definition of fraud, which in some States extends even to misstatements innocently made, but without reasonable investigation. And if the Board should decide to dismiss such charges, its order of dismissal would be subject to review in the Federal courts.

Proposals such as these under discussion are not new. They were suggested when section 7 (a) of the National Industrial Recovery Act was up for discussion, and when the 1934 amendments to the Railway Labor Act were before Congress. In neither instance did they command the support of Congress.

The succeeding unfair labor practices are intended to amplify and state more specifically certain types of interference and restraint that experience has proved require such amplification and specification. These specific practices, as enumerated in subsections (2), (3), (4), and (5), are not intended to limit in any way the interpretation of the general provisions of subsection (1).

The second unfair labor practice prohibits an employer from dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it. It is provided, however, that subject to rules and regulations made and published by the Board, an employer may permit employees to confer with him during working hours without loss of time or pay. This section has its counterpart in provisions of other Federal statutes, such as the Railway Labor Act amendments of 1934, section 2; the Bankruptcy Act amendments of 1933 and 1934; and the Emergency Transportation Act, section 7 (e).

It is reliably estimated that about 70 percent of the company unions now in existence were established subsequent to the passage of section 7 (a) of the National Industrial Recovery Act. According to the semi-annual report of the National Labor Relations Board to the President, for the period, July 9, 1934, to January 9, 1935, such company unions were a primary or attendant cause of the disputes in about 30 percent of the cases heard by the National Board; and the great majority of such company unions had become active in contemplation of or contemporaneously with a trade-union organizing movement, or in close relation to a strike. Employer-promoted unions are most prevalent in the larger plants and industries, where the bargaining power of the individual worker is very weak, and, curiously enough, where the managements have hitherto been opposed to organization of their workers. It is of the essence that the right of employees to self-organization and to join or assist labor organizations should not be reduced to a mockery by the imposition of employer-controlled labor organizations, particularly where such organizations are limited to the employees of the particular employer and have no potential economic strength.

Nothing in the bill prohibits the formation of a company union, if by that term is meant an organization of workers confined by their own volition to the boundaries of a particular plant or employer. What is intended is to make such organization the free choice of the

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workers, and not a choice dictated by forms of interference which are weighty precisely because of the existence of the employer-employee relationship. The forms which such interference may take have been disclosed in the experience of the labor boards engaged in the investigation of charges of violation of section 7 (a) during the past 2 years. These are of course matters for decision on the facts of the individual case. The most commonly recognized forms of interference have

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been financial support, participation in the formulation of the constitution or bylaws or in the internal management of the company union, espionage, and the like. An extremely common form of interference is the provision in the constitution or bylaws of company unions that changes may not be made except with the consent of the employer. The prohibition of financial support is particularly justified. Collective bargaining is reduced to a sham when the employer sits on both sides of the table by supporting a particular organization with which he deals, by the payment of added compensation to their representatives, or by permitting such representatives to conduct organizational work among the employees during working hours without deduction of pay.

How often it has been said by employers who object to "outside unions" that their representatives "agitate" among employees during working hours and that employees affiliated with such organizations "disturb" other employees. No action could be more provocative of resentment, unrest, and strife than these forms of financial support. On this subject it is pertinent to quote a portion of the opinion of the National Labor Relations Board in *Matter of B. F. Goodrich Co.* (1 N. L. R. B. 181, 184 (1934)):

> Another feature of the plan which raises a serious problem is the fact that it is financed by the company, and that, in particular, the company pays extra salaries to the employee representatives under the plan. At the time when the plan was initiated by the company there existed a group of employees within the plant, we do not know how numerous, who favored affiliation with an outside union as their designated agency for collective bargaining. We may assume that there were also at the plant employees who preferred a plant organization. At this juncture we believe that the company interfered with the self-organization of its employees when it threw the great weight of its financial support in favor of the group of employees who wanted a plant organization, to the competitive disadvantage of the group of employees who wanted representation by an outside union. In effect this was a form of discrimination which handicapped the efforts of one group of employees in promoting their ideas on self-organization. The tendency of the thing at the time of the inauguration of the plan was corrupting and the continuance of financial support by the company at the present time is corrupting. This is particularly true of the payment of salaries to representatives. However single-minded the elected representatives under the plan might be in their devotion to the interests of the employees, the provision for paying extra salaries to the approximately 150 employee representatives causes their independence of employer domination to be highly dubious. It is improper for the company to influence the choice of employees in the manner described above, which involves, in substance, the subsidizing of an active group of propagandists among the employees for the type of employee representation the company would prefer to deal with.

The specific practices to which we have adverted have been recognized by our highest courts as forms of interference. In *Texas & New Orleans R. R. Co.* v. *Brotherhood of Railway Clerks* (281 U. S. 548, 560), Chief Justice Hughes, writing for a unanimous Court, stated in a decision under the Railway Labor Act of 1926:

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The circumstances of the soliciting of authorizations and memberships on behalf of the association, the fact that employees of the railroad company who were active in promoting the development of the Association were permitted to devote their time to that enterprise without deduction from their pay, the charge to the railroad company of expenses incurred in recruiting members of the association, the reports made to the railroad company of the progress of these efforts, and the discharge from the service of the railroad company of leading representatives of the brotherhood and the cancelation of their passes, gave support, despite the attempted justification of these proceedings, to the conclusion of the courts below that the railroad company and its officers were actually engaged in promoting the organization of the association in the interest of the company

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and in opposition to the brotherhood, and that these activities constituted an actual interference with the liberty of the clerical employees in the selection of their representatives.

It should be noted finally that the employer can be said to "dominate" the "formation or administration of a labor organization" where several of these forms of interference exist in combination, and he is able thereby to corrupt or override completely the will of employees.

The third unfair labor practice prohibits an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization. This spells out in greater detail the provisions of section 7 (a) prohibiting yellow-dog contracts and interference with self-organization. This interference may be present in a variety of situations in this connection, such as discrimination in discharge, lay-off, demotion or transfer, hire, forced resignation, or division of work; in reinstatement or hire following a technical change in corporate structure, a strike, lock-out, temporary lay-off, or a transfer of the plant.

Nothing in this subsection prohibits interference with the normal exercise of the right of employers to select their employees or to discharge them. All that is intended is that the employer shall not by discriminatory treatment in hire or tenure of employment or terms or conditions of employment, interfere with the exercise by employees of their right to organize and choose representatives. It is for this reason that the employer is prohibited from encouraging or discouraging membership in any labor organization by such discrimination.

The proviso to the third unfair labor practice, dealing with the making of closed-shop agreements, has been widely misrepresented. The proviso does not impose a closed shop on all industry; it does not give new legal sanctions to the closed shop. All that it does is to eliminate the doubts and misconstructions in regard to the effect of section 7 (a) upon closed-shop agreements, and the possible repetition of such doubts and misconstructions under this bill, by providing that nothing in the bill or in section 7 (a) or in any other statute of the United States shall illegalize a closed-shop agreement between an employer and a labor organization, provided such organization has not been established, maintained, or assisted by any action defined in the bill as an unfair labor practice and is the choice of a majority of the employees, as provided in section 9 (a), in the appropriate collective bargaining unit covered by the agreement when made. The bill does nothing to legalize the closed-shop agreement in the

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States where it may be illegal; but the committee is confident that it would not be the desire of Congress to enact a general ban upon closed-shop agreements in the States where they are legal. And it should be emphasized that no closed shop may be effected unless it is assented to by the employer.

The fourth unfair labor practice relates to discharge or other discrimination against an employee because he has filed charges or given testimony under the bill.

The fifth unfair labor practice, regarding the refusal to bargain collectively, rounds out the essential purpose of the bill to encourage collective bargaining and the making of agreements.

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REPRESENTATIVES AND ELECTIONS

Majority rule.—Section 9 (a) incorporates the majority rule principle, that representatives designated for the purposes of collective bargaining by the majority of employees in the appropriate unit shall be the exclusive representatives of all the employees in that unit "for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." As a necessary corollary it is an act of interference (under sec. 8 (1)) for an employer, after representatives have been so designated by the majority, to negotiate with individuals or minority groups in their own behalf on the basic subjects of collective bargaining.

The misleading propaganda directed against this principle has been incredible. The underlying purposes of the majority rule principle are simple and just. As has frequently been stated, collective bargaining is not an end in itself; it is a means to an end, and that end is the making of collective agreements stabilizing employment relations for a period of time, with results advantageous both to the worker and the employer. There cannot be two or more basic agreements applicable to workers in a given unit; this is virtually conceded on all sides. If the employer should fail to give equally advantageous terms to nonmembers of the labor organization negotiating the agreement, there would immediately result a marked increase in the membership of that labor organization. On the other hand, if better terms were given to nonmembers, this would give rise to bitterness and strife, and a wholly unworkable arrangement whereby men performing comparable duties were paid according to different scales of wages and hours. Clearly then, there must be one basic scale, and it must apply to all.

It would be undesirable if this basic scale should result from negotiation between the employer and unorganized individuals or a minority group, for the agreement probably would not command the assent of the majority and hence would not have the stability which is one of the chief advantages of collective bargaining. If, however, the company should undertake to deal with each group separately, there would result the conditions pointed out by the present National Labor Relations Board in its decision in the *Matter of Houde Engineering Corporation* (1 N. L. R. B. 35 (Aug. 30, 1934)):

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It seems clear that the company's policy of dealing first with one group and then with the other resulted, whether intentionally or not, in defeating the object of the statute. In the first place, the company's policy inevitably produced a certain amount of rivalry, suspicion, and friction between the leaders of the committees. * * * Secondly, the company's policy, by enabling it to favor one organization at the expense of the other, and thus to check at will the growth of either organization, was calculated to confuse the employees, to make them uncertain which organization they should from time to time adhere to, and to maintain a permanent and artificial division in the ranks.

Speaking of the company's suggested alternative that it deal with a composite committee made up of representatives of the two major conflicting groups, supplemented by other individual employees, the Board pointed out:

This vision of an employer dealing with a divided committee and calling in individual employees to assist the company in arriving at a decision is certainly far from what section 7 (a) must have contemplated in guaranteeing the right of collective bargaining. But whether or not the workers' representation by a com-

posite committee would weaken their voice and confuse their counsels in negotiating with the employer, in the end whatever collective agreement might be reached would have to be satisfactory to the majority within the committee. Hence the majority representatives would still control, and the only difference between this and the traditional method of bargaining with the majority alone would be that the suggestions of the minority would be advanced in the presence of the majority. The employer would ordinarily gain nothing from this arrangement if the two groups were united, and if they were not united he would gain only what he has no right to ask for, namely, dissention and rivalry. * * *

Since the agreement made will apply to all, the minority group and individual workers are given all the advantages of united action. And they are given added protection in various respects. First, the proviso to section 9 (a) expressly states that "any individual employee or a group of employees shall have the right at any time to present grievances to their employer." And the majority rule does not preclude adjustment in individual cases of matters outside the scope of the basic agreement. Second, agreements more favorable to the majority than to the minority are impossible, for under section 8 (3) any discrimination is outlawed which tends to "encourage or discourage membership in any labor organization." Nor does the majority rule in itself establish a closed shop or encourage a closed shop, that being a matter of negotiation and agreement requiring the assent of the employer, as discussed above.

In view of what has been said, it is apparent that those who oppose majority rule in effect oppose collective bargaining and the making of collection agreements as the end thereof, by seeking to create conditions making such accomplishment impossible. Those who profess to favor collective bargaining and the general purposes of this bill should favor majority rule, which is the only practical method of achieving the desired ends. Majority rule is at the basis of our democratic institutions. The same organized employer groups who now oppose majority rule for workers have publicly announced their adherence to it as applied to the formulation of codes of fair competition. It has been the experience of the National Labor Relations Board in cases before it that employers opposing majority rule wished only to keep their responsibilities diffused and to maintain in the picture a complacent minority group, typically a company union, so that no

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collective agreement might be reached at all. This motivation has been brought to the surface in specific cases where employers refused to recognize the rule when trade unions represented the majority, although in the course of the previous history of the disputes in question, when the opposing employer-promoted company unions had a majority, the employers had invoked the majority rule as the excuse for their refusal to deal with the same trade unions. Thus in *Matter of Guide Lamp Corporation* (1 N. L. R. B. 48 (1934), the Board said:

> * * * The company has not always felt the same consideration it now expresses for minority groups. In October 1933 the union addressed a letter to the company requesting an opportunity to meet and bargain collectively.
>
> The company's letter in reply stated that the Guide Employees' Association represented 70 percent of the employees and concluded:
>
> "If we begin the practice of negotiation with each group which presents itself, we will not be complying with the provisions of the National Recovery Act, and a great deal of confusion would result. If there is any complaint or grievance which you wish to present, we shall be glad to consider it, but any negotiation or collective bargaining must be with the committee representing the great majority of our employees."

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Many precedents for majority rule in labor relation may be cited. Thus it has been applied by the National War Labor Board, the Railway Labor Board, the National Labor Board, and by the three boards established under Public Resolution 44: the National Steel Labor Relations Board, the National Textile Labor Relations Board, and the National Labor Relations Board. The rule was expressly written into the statute books by Congress in the Railway Labor Act of 1934: "Employees shall have the right to bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act" (sec. 2 (4)).

Section 9 (b) provides that the Board shall determine whether, in order to effectuate the policy of the bill (as expressed in sec. 1), the unit appropriate for the purposes of collective bargaining shall be the craft unit, plant unit, employer unit, or other unit. This matter is obviously one for determination in each individual case, and the only possible workable arrangement is to authorize the impartial governmental agency, the Board, to make that determination. There is a similar provision in the Railway Labor Act of 1934 (sec. 2 (9); 2 (4)).

Elections.—Section 9 (c) makes provision for elections to be conducted by the Board or its agents or agencies to ascertain the representatives of employees. The question will ordinarily arise as between two or more bona fide organizations competing to represent the employees, but the authority granted here is broad enough to take in the not infrequent case where only one such organized group is pressing for recognition, and its claim of representation is challenged. It is, of course, contemplated that pursuant to its authority under section 6 (a), the Board will make and publish appropriate rules governing the conduct of elections and determining who may participate therein.

The committee adheres, with the present National Labor Relations Board, to the common belief that the device of an election in a democratic society has, among other virtues, that of allaying strife,

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not provoking it. Obviously the Board should not be required to wait until there is a strike or immediate threat of strike. Where there are contending factions of doubtful or unknown strength, or the representation claims of the only organized group in the bargaining unit are challenged, there exists that potentiality of strife which the bill is designed to eliminate by the establishment of this machinery for prompt, governmentally supervised elections.

As previously stated in this report, the efficacy of Public Resolution 44 has been substantially impaired by the provision for court review of election orders prior to the holding of the election. Section 9 (d) of the bill makes clear that there is to be no court review prior to the holding of the election, and provides an exclusive, complete, and adequate remedy whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an election or other investigation pursuant to section 9 (c). The hearing required to be held in any such investigation provides an appropriate safeguard and opportunity to be heard. Since the certification and the record of the investigation are required to be included in the transcript of the entire record filed pursuant to section 10 (e) or (f), the Board's actions and determinations of fact and law in

regard thereto will be subject to the same court review as is provided for its other determinations under sections 10 (b) and 10 (c).

PREVENTION OF UNFAIR LABOR PRACTICES

The Board is empowered, according to the procedure provided in section 10, to prevent any person from engaging in any unfair labor practice listed in section 8 "affecting commerce", as that term is defined in section 2 (7). This power is vested exclusively in the Board and is not to be affected by any other means of adjustment or prevention. The Board is thus made the paramount agency for dealing with unfair labor practices described in the bill.

The procedure provided is analogous to that in the Federal Trade Commission Act (sec. 5) and is familiar to all students of administrative law. Provisions are made to assure the basic protections against arbitrary action which are generally regarded as prerequisite to due process of law. The provision that the technical rules of evidence shall not be controlling is but a restatement of the law generally recognized as applicable in comparable administrative tribunals. The court review afforded aggrieved parties under subsection (f) gives an adequate opportunity for review of the procedure before the Board. It is contemplated of course, that the Board, will establish rules governing procedure in greater detail, in such manner as will be conducive to the proper dispatch of business and to the ends of justice.

If upon all the testimony taken the Board decides that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board, according to the usual practice of similar administrative bodies, states its findings of fact and issues an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action as will effectuate the

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policies of the bill, i. e., as defined in section 1, to encourage the practice of collective bargaining and to protect the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing. The orders will of course be adapted to the needs of the individual case; they may include such matters as refraining from collective bargaining with a minority group, recognition of the agency chosen by the majority for the purposes of collective bargaining, posting of appropriate bulletins, refraining from bargaining with an organization corrupted by unfair labor practices. The most frequent form of affirmative action required in cases of this type is specifically provided for, i. e., the reinstatement of employees with or without back pay, as the circumstances dictate. No private right of action is contemplated. Essentially the unfair labor practices listed are matters of public concern, by their nature and consequences, present or potential; the proceeding is in the name of the Board, upon the Board's formal complaint. The form of injunctive and affirmative order is necessary to effectuate the purpose of the bill to remove obstructions to interstate commerce which are by the law declared to be detrimental to the public weal.

The form and nature of the Board's order will of course be subject to court review, along with the other determinations and actions of the Board in the case, both as to the facts and the law, in the manner provided in subsection (e) or (f).

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If the person complained of fails or neglects to obey the Board's order, it is provided that the Board shall be empowered to petition any appropriate Circuit Court of Appeals of the United States for the enforcement of such order, and in the event that all the circuit courts to which application may be made are in vacation, the Board may in its discretion apply to the district court. Express provision is made for the granting of appropriate temporary relief or a restraining order, and the court is empowered to enter upon the pleadings, testimony, and proceedings set forth in the transcript a decree enforcing, modifying or setting aside in whole or in part the order of the Board.

According to a similar procedure, any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in the appropriate circuit court of appeals, or in the Court of Appeals of the District of Columbia. It is intended here to give the party aggrieved a full, expeditious, and exclusive method of review in one proceeding after a final order is made. Until such final order is made the party is not injured, and cannot be heard to complain, as has been held in cases under the Federal Trade Commission Act.

INVESTIGATORY POWERS

For the purpose of all hearings and investigations which in the opinion of the Board are necessary and proper for the exercise of the powers vested in it by section 9 and section 10, dealing with investigations of questions concerning the representation of employees and

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unfair labor practices, there is granted in section 11 of the subpena powers typically provided for similar administrative bodies, without which their work would be ineffectual. The section grants no roving commission, but is limited to the exercise of powers and functions embodied in sections 9 and 10. Any member of the Board is empowered to issue subpenas requiring the attendance and testimony of witnesses (including, of course, the person complained of), and the production of any evidence that relates to matters under investigation or in question. In case of contumacy or refusal to obey a subpena, the Board may make application to the appropriate district court, which is empowered to issue orders requiring obedience, and to punish for contempt if necessary.

Section 11 (4) provides for the appropriate service of all process issued by the courts to which application may be made under section 11 (2) or sections 10 (e) or (f). This provision is comparable to that found, for example, in Securities Exchange Act, section 21 (c) and 27; Clayton Act, section 12; and Petroleum Control Act of 1935, section 10 (b).

Under section 12 any person who shall willfully resist, prevent, impede or interfere with any member of the Board or any of its agents or agencies in the performance of the duties pursuant to the bill shall be punished by a fine not in excess of $5,000 or by imprisonment not in excess of 1 year, or both. This guarantees that the Board will be protected in the conduct of its work, and, that tampering with records, interfering with witnesses, or the doing of other acts of like nature will be punishable as a criminal offense. The section of course can have no application to the exercise of the right to strike.

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LIMITATIONS

Section 13 is designed to preclude the interpretation of any provision in the bill so as to "interfere with or impede or diminish in any way the right to strike." Public Resolution 44, passed by a unanimous Congress last year, likewise provided (sec. 6):

> Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities.

Section 15 contains the usual separability provision.

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MINORITY VIEW

At the very outset I want to nake my position clear. I am wholeheartedly in favor of this bill. I believe it to be a great step for the protection of the rights of organized labor of the United States; and irrespective of whether or not the following suggestions are adopted I shall vote for the bill.

I find myself unable to agree with the decision of the committee to affiliate the National Labor Relations Board with the Department of Labor. It is clearly immaterial whether this affiliation is accomplished merely by providing generally that the Board shall be located in the Department of Labor, or by providing in detail that the Secretary of

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Labor shall control the personnel, the regional agencies, and the budget of the Board. Regardless of variations in language, if the Board is placed within theDepartment, the Secretary of Labor will control the purse strings, and that control will be the decisive factor in determining the extent and the character of the personnel, the nature of the work done, and the administrative set-up of the Board, both in Washington and throughout the country. This in turn will be determinative of the major policies of the Board, as I shall presently discuss. On this issue there can be no compromise; either the Board must be completely independent or it must be reduced to the level of a departmental bureau.

I should have thought that even without regard for the past history of the National Labor Relations Board and the testimony before this committee, both of which seem to me compelling upon this point, precedent alone would have induced the establishment of the Board as an independent agency. The Board is to be solely a quasi-judicial body with clearly defined and limited powers. Its policies are marked out precisely by the law. That such an agency should be free from any other executive branch of the Government has been the recognized policy of Congress. Ready examples are the Interstate Commerce Commission, the Federal Trade Commission, the Communications Commission, the Securities and Exchange Commission, the National Mediation Board, and agencies that are even less judicial in character, such as the Federal Housing Administration and the Reconstruction Finance Corporation. It seems strange that this committee, which has built up so fine a record in the interests of labor, should be grudgingly unwilling to establish for the protection of labor's most basic rights an agency as dignified and independent, and as likely to attain the prestige that flows from such independence, as those which have been established to protect the interests of other groups.

The vital need for the complete independence of a quasi-judicial board that must enforce the law has been best illustrated by the collapse of section 7 (a) of the Recovery Act. That famous section broke down, not so much because the Recovery Act into which it was written did not contain adequate enforcement provisions, but

because the actual enforcement of 7 (a) was tied up with the wrong agencies. The Labor Board, it is true, could make "decisions"; but actual enforcement rested with the National Recovery Administration and the Department of Justice. Since the N. R. A. had other functions, such as code making, etc., which required constant cultivation of friendly and conciliatory feelings between the N. R. A. and those with whom it had to deal, the N. R. A. has been forced repeatedly to compromise and bargain away the specific rights guaranteed by section 7 (a). And the Department of Justice likewise has been reluctant to act upon this touchy subject, because of entirely extrinsic consideration of government policy that should have had nothing to do with section 7 (a). The complete frustration of the present National Labor Relations Board has resulted from this very simple failure to maintain the traditional and tested division between quasi-judicial bodies on the one hand and the general work of executive

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departments tied up with the governmental policy of a particular administration, on the other.

This anomalous situation would be perpetuated by placing the National Labor Relations Board in the Department of Labor. The Department is an executive arm of the Government. The Secretary of Labor is an officer of a particular administration, and I say this from the long-range point of view, and with due regard for the abilities of the present Secretary. The Department is thus quickly susceptible to political repercussions, and it is charged with many administrative duties involving constant compromise between industry and government. Thus the Board would quickly be swallowed up in the general policies of the Department of Labor.

These difficulties are not answered at all by insisting that the judicial decisions of the National Labor Relations Board would not be subject to review by the Secretary of Labor or by any officer in the executive branch of the Government. If in fact the Board were to be independent in its actions, there would be no reason for anyone wanting to set it up in the Department of Labor. But that is not the case; the final "judicial decisions" are only a small part of the work of such a Board, and by control over other stages in the enforcement process the Department of Labor would be the final arbiter of the policies of the Board.

For example, to be effective in enforcement, the Board must control complaints of unfair labor practices from their very inception. Yet this would not be the case were the Board in the Department. It is quite true that the proponents of placing the Board in the Department insist that there should be no mediation or conciliation done by the Board. But that does not preclude the possibility of mediation of an unfair labor practice by the Conciliation Service of the Department before the Board would act. And in the long run, that would inevitably result from locating the Board in the Department, while its advent would be hastened by an administration unsympathetic toward labor. This is the very worst kind of confusion of conciliation and quasi-judicial work, not in that the Board will do both but that both will be used at successive stages in attempting to enforce the law.

What will result from such a procedure? Conciliation at the source will not build up the kind of records that the Board might later refer to the courts for enforcement. Compromise of the law at the outset will constantly plague the Government when the time comes to

vindicate the law. A wide variety of interpretations without any centralizing force will create uncertainty and distrust. The National Labor Relations Board will be called into operation only where there has been a record of failure rather than success; only when the prestige of the Government has already been impaired by the failure of its agencies. Moreover, the duplication of effort and the long delay before complaints of unfair practices finally reach the Board will wreak havoc upon workers' rights. The worker who is wronged must get help quickly if at all. The injury of the long delay can never be redressed. The occasion to protest by his own collective action once let past, can never be recalled. These are not fancied evils; they

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are present now because of the very policies which I do not wish to see continued.

To prevent unfair labor practices, the National Labor Relations Board must have control of enforcement not at the end of the trail but from the very beginning. It must follow the procedure that is followed by the Federal Trade Commission in preventing unfair trade practices. No one would suggest, when there is a claim of an unfair trade practice, that there should first be mediation by the Department of Commerce and then action by the Commission in the event of failure.

In addition, if the Department of Labor is to control the first steps in regard to the prevention of unfair practices, it will have the discretion to cut enforcement off its sources. "Judicial independence" will do the Board no good as to cases that never reach it.

Thus the issue raised is a very narrow one. If the purpose of placing the National Labor Relations Board in the Department of Labor is that the Department and the Board shall function jointly to protect the rights guaranteed by section 7 (a), then the whole enforcement mechanism will collapse because of dispersion of responsibility and because of an overlapping of conciliation and judicial work. And if the Board should operate independently of the Department, it is unfair to make it subject to departmental control over budget and personnel.

In view of these major considerations, which have proved controlling in every other case where the Government has set up a quasi-judicial body, the point that there might be some overlapping of statistical work by the Board and the Department of Labor is trivial and unrealistic. In fact, it is entirely appropriate to amend the bill, as has been done, to provide that the Board should not do any statistical work, mediation, or conciliation, when such services are available in the Department of Labor.

It should be repeated that the National Labor Relations Board is to be purely a quasi-judicial commission. Its prestige and efficacy must be grounded fundamentally in public approval and in equal confidence in its impartiality by Labor and Industry. If the Board is placed in the Department it will suffer ab initio from the suspicion that it is not a court, but an organ devoted solely to the interests of laboring groups. Far from helping labor, this will impair the work of the Board and render more difficult the sustaining of its supposedly impartial decisions by the Federal courts.

Finally, let me emphasize the paramount consideration that the inclusion of the Board in the Department of Labor will injure not only the Board, but the Department itself, and through it the interests of

labor. The Department was not established to handle all the industrial relation problems of the Government. It was not established to covet impartial or quasi-judicial functions, or to interpret laws of Congress. It was founded, as is too often forgotten now, as a department for labor, and to "foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employ-

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ment." There is more work of this type to be done than ever before and the Department is in no danger of lapsing into disuse if it is aware of its duties. I believe that labor would have fared better under the codes if the Department had remained true to its function as a militant organ for working people, rather than attempted to appear as a labor relations bureau of the Federal Government, representing all interests alike, and overzealous to guard itself against supposed encroachments. The efforts to secure control over an impartial quasi-judicial board is a definite step by the Department away from those activities which can make it most useful to the working people of America.

The Senate bill very wisely has made the Board an independent agency. The House should follow the Senate on this very vital matter.

I also find myself unable to agree with the committee in its exclusion of agricultural workers. It is a matter of plain fact that the worst conditions in the United States are the conditions among the agricultural workers. They have been brought to the public attention many times; for example, by the investigations of the National Child Labor Committee into the horrible conditions, especially as affecting children, in the beet-sugar fields. The complete denial of civil liberty and the reign of terror in the Imperial Valley have been the subject of investigation by Government agents. Last summer saw a protracted and heroic strike by the terribly exploited union workers in the fertile fields of Hardin County, Ohio, against their employers. These workers were organized in a federal local of the A. F. of L. They were victims of the usual type of oppression which was called to public attention in the press.

However, the most conclusive proof that there must be Federal action to protect the right of agricultural workers to organize is to be found in the situation in Arkansas. In that State, within the last year, there has come into being an admirable union of agricultural workers, the Southern Tenant Farmers Union. It has been incorporated under the laws of the State. Its immediate demands are entirely reasonable and its methods have been extraordinarily peaceful. Yet that union is at present holding no meetings on advice of its counsel who says that it cannot be protected from terroristic attacks. Armed planters have patrolled the roads looking for the principal organizers of the union. The president of the union, a former rural school teacher, was driven out of the county by threats of lynching. Members of the union have been beaten up. Some of them have been cast in jail from which they were ultimately delivered but only in one or two cases after they had been confined on trumped charges for 45 days. Meetings have been forcibly broken up. The lawyer for the union is C. T. Carpenter, one of the outstanding lawyers of the State of Arkansas. He was waited on by an armed mob one night in his own home. He met them at the door with a pistol in his hand. The mob left but not without firing shots at the house.

What these people in Arkansas are organizing against is the most outrageous exploitation in America. The plantation system of itself is damnable. It combines the worst evils of feudalism and capitalism. The overseers on the plantations go armed.

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A continuance of these conditions is preparing the way for a desperate revolt of virtual serfs. Unless the right to organize peacefully can be guaranteed we shall have a continuance of virtual slavery until the day of revolt. The union and the exploited victims of this system have shown an amazing willingness, or rather a deep-seated anxiety, to avoid bloodshed.

I, therefore, respectfully submit that there is not a single solitary reason why agricultural workers should not be included under the provisions of this bill. The same reasons urged for the adoption of this bill in behalf of the industrial workers are equally applicable in the case of the agricultural workers, in fact more so as their plight calls for immediate and prompt action.

VITO MARCANTONIO

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CHANGES IN EXISTING LAW

The bill (S. 1958) does not repeal or amend expressly any provision of law, but refers to several provisions of law which are set forth for the information of the House.

JOINT RESOLUTION To effectuate further the policy of the National Industrial Recovery Act

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to further effectuate the policy of title I of the National Industrial Recovery Act, and in the exercise of the powers therein and herein conferred, the President is authorized to establish a board or boards authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7a of said Act or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce, the salaries, compensation and expenses of the board or boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act.

SEC. 2. Any board so established is hereby empowered, when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees of any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize and to select their representatives for the purpose of collective bargaining as defined in section 7a of said Act and now incorporated herein.

For the purposes of such election such a board shall have the authority to order the production of such pertinent documents or the appearance of such witnesses to give testimony under oath, as it may deem necessary to carry out the provisions of this resolution. Any order issued by such a board under the authority of this section may, upon application of such board or upon petition of the person or persons to whom such order is directed, be enforced or reviewed, as the case may be, in the same manner, so far as applicable, as is provided in the case of an order of the Federal Trade Commission under the Federal Trade Commission Act.

SEC. 3. Any such board, with the approval of the President, may prescribe such rules and regulations as it deems necessary to carry out the provisions of this resolution with reference to the investigations authorized in section 1, and to assure freedom from coercion in respect to all elections.

SEC. 4. Any person who shall knowingly violate any rule or regulation authorized under section 3 of this resolution or impede or interfere with any member or agent of any board established under this resolution in the performance of his duties, shall be punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

SEC. 5. This resolution shall cease to be in effect, and any board or boards established hereunder shall cease to exist, on June 16, 1935, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 of the National Industrial Recovery Act has ended.

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SEC. 6. Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities. [Joint Resolution of June 19, 1934.]

* * * * * * *

[Judicial Code.] SEC. 239. In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, the court at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which instructions are desired for the proper decision of the cause; and thereupon the Supreme Court may either give binding

instructions on the questions and propositions certified or may require that the entire record in the cause be sent up for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there by writ of error or appeal.

[Judicial Code.] SEC. 240. (a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

(b) Any case in a circuit court of appeals where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against its validity, may, at the election of the party relying on such State statute, be taken to the Supreme Court for review on writ of error or appeal; but in that event a review on certiorari shall not be allowed at the instance of such party, and the review on such writ of error or appeal shall be restricted to an examination and decision of the Federal questions presented in the case.

(c) No judgment or decree of a circuit court of appeals or of the Court of Appeals of the District of Columbia shall be subject to review by the Supreme Court otherwise than as provided in this section.

(The writ of error referred to in the above sections has been abolished by the act of Jan. 31, 1928, 45 Stat. 54.)

* * * * * * *

AN ACT To amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

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SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to

join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but

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no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

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Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused

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shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

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SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed. [Act of March 23, 1932.]

* * * * * * *

[National Industrial Recovery Act] SEC. 7. (a) Every code of fair competition agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

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[Sec. 77B of the Bankruptcy Act] (l) No judge, debtor, or trustee acting under this section shall deny or in any way question the right of employees on the property under the jurisdiction of the judge, to join the labor organization of their choice, and it shall be unlawful for any judge, debtor, or trustee to interfere in any way with the organizations of employees, or to use funds under such jurisdiction, in maintaining so-called company unions, or to coerce employees in an effort to induce them to join or remain members of such company unions.

(m) No judge, debtor, or trustee acting under this section shall require any person seeking employment on the property under the jurisdiction of the judge to sign any contract or agreement promising to join or to refuse to join a labor organization; and if such contract has been enforced on the property prior to the property coming under the jurisdiction of said judge, then the judge, debtor, or trustee, as soon as the matter is called to his attention, shall notify the employees by an appropriate order that said contract has been discarded and is no longer binding on them in any way.

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74th CONGRESS

1ST SESSION

H. RES. 227

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1935

Mr. CONNERY submitted the following resolution; which was referred to the Committee on Rules and ordered to be printed

RESOLUTION

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of S. 1958, a bill to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill and shall continue not to exceed four hours, to be equally divided and controlled by the Chairman and ranking minority member of the Committee on Labor, the bill shall be read for amendment under the five-minute rule. At the conclusion of the

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reading of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and the amendments thereto to final passage without intervening motion, except one motion to recommit.

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CONGRESSIONAL RECORD, HOUSE—MAY 24, 1935

(79 Cong. Rec. 8186)

The SPEAKER pro tempore. The gentleman from Texas is recognized for 5 minutes.

NO GROUP LEGISLATION SHOULD BE FORCED BY THREATS

Mr. BLANTON. Mr. Speaker, no honest legislator should ever be compelled to do anything. No selfish group should ever attempt to force Congress to comply with its demands. Legislation coerced by threats is dangerous to the people.

As a true, sincere friend of all labor, organized and unorganized, I feel that our country is seriously alarmed over threats broadcast in this morning's press. The Washington Herald, under the scarry headlines on its front page—Green Sounds A. F. L. General Strike Threat, and the sub-headlines, Labor to Lay Down Tools Unless Congress Grants Its Basic Demands, Says Leader—prints the following:

NEW YORK, May 23 (U. S.).—Labor stands ready to tie up the Nation's industry by throwing down its tools in a general strike if Congress fails to grant its basic demands. William Green, president of the American Federation of Labor, warned today.

Addressing a mass meeting of 25,000 workers that crammed every available inch of Madison Square Garden, Mr. Green listed labor's demands as 2-year extension of the N. R. A., passage of the Wagner labor disputes bill and inauguration of a 30-hour week.

CROWD ROARS APPROVAL

The crowd roared its approval as the labor leader threatened:

"If Congress fails us, labor has its economic strength.

"If it comes to the point, we can mobilize our complete strength and refuse to work until we get our rights!

And when the applause had thundered away, he added grimly:

"That is no idle threat! I mean just what I say!"

In addition, he told the audience, labor must be ready to mobilize its political strength to defeat unfriendly Congressmen when they run for reelection.

CITES PARKER CASE

Labor, he said, had been able to block the confirmation of Judge Parker as a Justice of the United States Supreme Court. Of the Senators who defied labor and voted to confirm Mr. Parker, not one ever went back to the Senate, he asserted.

And on page 10 of this morning's Herald, under large headlines "Strikers Carry Fight Here", is a posed picture of three smiling young ladies picketing our United States Department of Justice, carrying a large banner attacking Gen. Homer Cummings, Attorney General of the United States, stating that their strike has been on since May 13, and that "the Wagner bill would not have made them suffer", and that "Attorney General Cummings refuses to prosecute", and printing underneath their picture the following:

Picket Department of Justice: Strikers at the plant of the Colt Firearms Co., in Hartford, carried their fight to the Capital in their attempt to focus national attention on their grievances. Some of the strikers from the Connecticut city are pictured as they carried their banner in front of the Department of Justice Building.

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This posed photograph of these three well-clad, well-groomed, smiling picketing young ladies is shown to have been taken by Underwood & Underwood, the leading photographers of Washington.

OTHER PAPERS CONFIRM PRESIDENT GREEN'S THREAT

I would hesitate to quote anything from the Washington Herald as authentic, were it not for the fact that practically the same news report of said threats is found in today's leading daily newspapers of the East; and, by permission of the House, I will quote in my remarks excerpts from the New York Times, the New York Herald Tribune, the Philadelphia Record, and the Philadelphia Inquirer, which was established in 1829, all asserting that such threats were made.

ARE PRESIDENT GREEN'S DEMANDS REASONABLE?

He demands that Congress must extend the N. R. A. 2 more years, must pass the Wagner Labor bill, and must pass the Black-Connery 30-hour-week bill. When extending my remarks, I will quote excerpts from the above bills to show that they will be harmful to the best interests of the whole people of the United States, and will quote other excerpts regarding measures that such threats have forced through Congress in past years which time has proven not to have been beneficial.

[8187] Mr. Speaker, for our distinguished friends and colleagues, the gentleman from Massachusetts [Mr. CONNERY], the gentleman from Missouri [Mr. WOOD], the gentleman from Ohio [Mr. COOPER], the gentleman from New York [Mr. MEAD], and the other distinguished spokesmen and leaders for organized labor in the House, we all have a high respect, and regard, and a real affection for all of them. They are all able, efficient, sincere representatives of the people, and through their effective fights here have accomplished much for organized labor on this floor, but I cannot believe that they or any other Member of this Congress will subscribe to or endorse the kind of threat that appears in today's press.

What is to become of Congress if we are to influenced by such threats? Our oath does not require us to faithfully and impartially represent only the three-million-odd members of the American Federation of Labor. Our oath requires us to represent all of the people—the 125,000,000 people of the United States.

With reference to Mr. Green's first demand, that Congress must extend the N. R. A. for 2 more years, the United States Senate has had extensive hearings on that subject, and there has been extensive debate on it in the Senate for a long time, and many distinguished and able Senators were opposed to extending the N. R. A. at all, but by way of compromise they reached a settlement on the controversy, and passed their bill recently extending the N. R. A. until April 1, 1936. Are they by threats to be forced to change their position? Is fear to enter their hearts? Are they to be dominated and controlled by the reminder that organized labor prevented the Senate from confirming Judge Parker on the Supreme Court?

Are United States Senators to be scared with the reminder that organized labor prevented all of the Senators who voted for confirmation of Judge Parker from being reelected? Are Senators to be

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dominated and controlled by threats of future opposition unless they change their votes and extend the N. R. A. for 2 more years? Have we come to this?

Mr. Green's second demand is that Congress must pass the Wagner labor bill, or there will be a general strike, and Congressmen voting against it will be defeated. There are some provisions in it that no businessman would endorse. There are provisions in the Wagner bill that would ruin and put out of business many businesses in the United States, that would wreck many small businesses, and are against the best interests of all of the people in the United States.

And the same thing is true respecting the Black-Connery 30-hour-week bill. It would stifle business. It would ruin many businesses. Yet, if Congress does not pass it, we are threatened with a general strike and with defeat for reelection.

Is Mr. Green to frighten Congress by such unreasonable threats? Has it come to pass that our beloved Federation of Labor, with less than 4,000,000 members, can control the Congress of the United States?

[Here the gavel fell.]

Mr. BLANTON. Mr. Speaker, I ask leave to put in the excerpts that I referred to.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. BLANTON. Mr. Speaker, so that there will not be any question about the authenticity of the press reports regarding the threat of President Green that unless Congress extended the N. R. A. for 2 years, and passed the Wagner bill, and the Black-Connery 30-hour-week bill, he would cause a general strike, and defeat for reelection all Senators and Congressmen voting against the said program of the American Federation of Labor, I quote the following excerpts from today's reputable newspapers:

ASSOCIATED PRESS REPORT

The Baltimore Sun carried the report of President Green's speech made by the Associated Press, and under the big headlines on its front page, "General Strike Threat If N. R. A. 2-Year Extension Is Rejected," and the subhead lines "William Green Addresses 50,000 in New York," I quote the following:

[From the Baltimore Sun]

By the Associated Press

NEW YORK, May 23.—A Nation-wide general strike was threatened tonight by William Green, president of the American Federation of Labor, unless Congress extends the N. R. A. for 2 years and passes the Wagner labor-disputes bill and the Black-Connery 30-hour-a-week bill.

Addressing nearly 50,000 members of the Federation, gathered inside and outside Madison Square Garden in a mass demonstration, Green also threatened political retaliation against Members of Congress.

"We will refuse to work and will mobilize our entire economic strength until we get our rights," he said as the vast crowd roared its approval.

"That is no idle statement. I mean just what I say. Furthermore, the workers can mobilize our political strength and order those men who deny us to stay at home when they stand for reelection."

Twenty-three thousand of the workers crowded into the Garden itself; the others thronged in the streets outside, taxing the efforts of several hundred policemen.

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[From the Philadelphia Inquirer (established 1829)]

NEW YORK, May 23.—Nation-wide general strike was threatened tonight by William Green, president of the American Federation of Labor, unless Congress extends the N. R. A. for 2 years and passes the Wagner labor-disputes bill and the Black-Connery 30-hour-a-week bill.

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NO IDLE STATEMENT

"That is no idle statement. I mean just what I say. Furthermore, the workers can mobilize our political strength and order those men who deny us to stay at home when they stand for reelection."

Twenty-three thousand of the workers crowded into the Garden itself, the others thronged in the streets outside, taxing the efforts of several hundred policemen

From the Philadelphia Record, which, under the big headlines, "Green Makes Threat of United States General Strike", had the subheads, "A. F. of L. Chief Warns of Action if Congress Ignores Demands", and "50,000 Cheer", and "N. R. A. Extension, Wagner Bill, and 30-Hour Week Urged", I quote the following:

[From the Philadelphia Record]

NEW YORK, May 23.—A Nation-wide general strike was threatened tonight by William Green, president of the American Federation of Labor, if Congress refuses to approve pending legislation demanded by labor.

Green sounded his warning before 50,000 trade unionists, gathered inside and outside Madison Square Garden in a mass demonstration.

He urged specifically extension of the N. R. A. for 2 years and passage of the Wagner disputes bill and the Black-Connery 30-hour-a-week bill.

NO IDLE THREAT

Threatening political retaliation against members of Congress, he declared:

"We will refuse to work and will mobilize our entire economic strength until we get our rights."

The vast crowd roared its approval.

"And that is no idle statement", he continued. "I mean just what I say. The workers can mobilize our political strength and order those men who deny us to stay at home when they stand for reelection."

Who will say, Mr. Speaker, that the New York Times is not reliable. In big headlines "Cheer Green in Threat of Strike", and subheadlines of "A. F. of L. Chief Warns Labor Will Fight to Force Congress to Adopt Bill of Rights", I quote the following:

[From the New York Times]

Organized labor stands ready to mobilize all its economic strength to force the adoption by Congress of what it considers to be its "Bill of Rights", William Green, president of the American Federation of Labor, declared yesterday afternoon at a huge rally in Madison Square Garden called by the trade-unions of the city.

"That is no idle statement. I mean just what I say. Furthermore, the workers can mobilize their political strength and compel those men in Congress who deny us our rights to remain at home when they stand for reelection."

More than 250,000 workers in the needle trades quit their work shortly after 2 p. m. in support of the legislative demands of the American Federation of Labor as voiced at the Garden meeting. Many thousands marched to the Garden in mass formation.

[8188] More than 500 policemen under command of Deputy Chief Inspector David J. McAuliffe were on duty inside the Garden and in the adjacent streets.

Mr. Green also denounced those Democrats in the Senate who voted against a 2-year extension of the N. R. A. and warned that Members of the House and

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Senate who will not support the President and the demands of the American Federation of Labor would be sent into political retirement. As part of this warning he cited the example of Judge Parker, of North Carolina, who failed of confirmation in the Senate when appointed to the United States Supreme Court, and the defeat by labor of Senators who voted for Judge Parker.

"We will not be diverted from our purpose," Mr. Green shouted. "Labor still possesses its economic strength. That can be utilized in an emergency. The workers can also mobilize their political strength and order those men who willfully defy the President to remain at home when they stand for reelection."

He urged all union men to send telegrams to the Members of Congress demanding passage of the Wagner bill and the 30-hour work bill.

"The battle is on," he declared. "It is really on. It is terrific. It is up to every one of you to do your duty."

N. R. A. BENEFITS ORGANIZED LABOR

N. R. A. has been a bonanza for organized labor. It has greatly benefitted the less than 4,000,000 members of the American Federation of Labor. But no one will deny that other Americans everywhere have suffered by its drastic codes. It has not hurt big business so much but it has hurt little businesses everywhere. It has caused many sacrifices to be made everywhere. Hence, if Congress should decide that April 1, 1936, is long enough to extend the N. R. A., President William Green and his American Federation of Labor should not think of calling a general strike, after all Congress has done for them. They should be too patriotic.

THE WAGNER-CONNERY BILL

The Wagner bill S. 1958, passed the United States Senate on May 16, 1935, and from it, I quote some provisions:

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created in the Department of Labor a board, to be known as the "National Labor Relations Board" * * *.

SEC. 4 (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia, incurred by the members or employees of the Board under its orders shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States.

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RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. * * *

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside.

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing. * * *

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; * * *.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

ENORMOUS EXPENSES TO BE PAID BY PEOPLE

It will be noted, Mr. Speaker, that all of the expenses of this Board, with salaries of $10,000 and all traveling expenses paid and its attorneys and horde of employees, are to be paid by all of the people of the United States.

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With every one of the millions of members of labor being given the right to a separate appeal in case they feel aggrieved, our courts everywhere will be cluttered with new suits, and all of this enormous expense is to be borne by all of the people of the United States.

MEN SUMMONED TO FAR-DISTANT TRIBUNALS

Businessmen from every part of the United States will be summoned by this Board, from the Department of Labor, to hearings far distant from their homes; and they will have to bring their books, private correspondence, and all of their business papers; will have to hire expensive attorneys to represent them; and pay not only their own expenses, but the expenses of their attorneys and witnesses to attend hearings and court trials. And if they inadvertently make some mistake they will be fined $5,000 and imprisoned for 1 year.

WILL CLOSE UP MANY BUSINESSES

Instead of causing capital to invest in new businesses we will find that business houses will close up and go out of business in every part of the United States. Interference with business has done more than anything else to bring about this depression. Businessmen do not want arrogant, overfed, walking delegates to dictate to them how they shall run every detail of their business. They are not going to stand for it. They will close up and get out of business. And when they do there will be millions of employees out of jobs, and with no chance to get a job.

THE TAIL CANNOT WAG THE DOG

The 125,000,000 people of the United States are not going to be held up and forced to make sacrifices just to pamper and grant special treatment and privileges to the less than 4,000,000 members of the American Federation of Labor.

THE ADAMSON ACT

It will be remembered that during the first term of President Wilson the railroad brotherhoods, through a like threat of strike and of tying up all of the railroads in the United States, passed the Adamson Act, which was the beginning of bad times ultimately for all railroad employees.

SPECIAL ESCH-CUMMINGS PROVISIONS

[8189] Then, again in 1919, the railroad brotherhoods again threatened a Nation-wide railroad strike, and forced Congress to grant them special privileges in the Esch-Cummings Act, after Director General McAdoo had granted them a raise in salary of $754,000,000, and then they forced another raise of $67,000,000 out of Director General Hines, and at that time I predicted that eventually it would be hurtful not only to the whole people of the United States who would have to foot the bill through increased freight and passenger tariffs, but that it would put many railroads out of business, and lay off and put out of jobs thousands of splendid railroad employees all over the United States. And that is just what happened.

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STARTED THE DEPRESSION

It was just such coerced laws, brought about through threats upon Congress, that have been largely instrumental in bringing about this continued depression. And it will never end until organized labor takes its throttle-hold off of the neck of this Government.

NO INVISIBLE GOVERNMENT CAN EXIST

There must not be any invisible government within greater and more powerful than the Government of the United States itself. The United States Government must be and remain supreme unless we end in chaos.

THE IMPOSSIBLE 30-HOUR-WEEK-BILL

Now, let me quote a few paragraphs from the Black-Connery bill:

That no article or commodity shall be shipped, transported, or delivered in interstate or foreign commerce, which was produced or manufactured in any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment situated in the United States, in which any person, except officers, executives, and superintendents, and their personal and immediate clerical assistants, was employed more than 5 days in any week or more than 6 hours in any day: * * *

SEC. 5. On and after the date this act takes effect it shall be unlawful for any employer subject to any of the provisions of this act to reduce, directly or indirectly, the daily, weekly, or monthly wage rate in effect on such date * * *.

SEC. 6. Any person who violates any of the provisions of this act, or who fails to comply with any of its requirements, shall upon conviction thereof be fined not less than $200 or be imprisoned for not more than 3 months, or both.

This bill also will close up thousands of business houses in every part of the United States. After men receive for 5 days' work of 6 hours per day the same pay they formerly received for a full week's work, they will find employment for their idle hours, and make double pay, or else they will eventually become lazy, shiftless, and of no account.

Idleness does not produce happiness. The man who is busy is the happy man. The man who does an honest day's work is the happy man. The man who does his best is the happy man. The man who produces his maximum is the happy man.

IDLENESS IS THE DEVIL'S WORKSHOP

If we pass a law that will induce men to work just a part of their time, idleness will inevitably follow. I have been a worker all of my life. I have gotten happiness out of it. I would be miserable if I did not keep busy. Should we Members of Congress work just 6 hours per day for 5 days only each week? Why not? Why should we work 10, 12, 14, or 16 hours per day? Why should farmers work 10, 12, 14, or 16 hours per day? Why should domestic servants work 10, 12, 14, or 16 hours per day? Why should all of the above be discriminated against? Why should they not have the same privileges that this bill grants to members of organized labor?

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NATION-WIDE STRIKE AND DEFEAT OUR ALTERNATIVE

But unless we Members of Congress pass all three of the above measures, Mr. Green threatens that he will precipitate a general strike, and that he will defeat us for reelection, and put us out of Congress. I would rather get out of Congress, Mr. Speaker, than to be such a servile, helpless worm.

The SPEAKER pro tempore. The gentleman from New York [Mr. FISH] is recognized for 5 minutes.

Mr. FISH. Mr. Speaker, I have asked for this time because I was absent when the payment in cash of the adjusted-service certificates to World War veterans was being considered in the House 2 months ago. At that time, as you all know, the Patman bill was passed by a few votes over the so-called "Vinson bill." When we voted on the veto message 2 days ago there was no debate or discussion in the House. A number of years ago I voted to override the veto of President Harding, which was sustained in the Senate.

Mr. MCFARLANE. Mr. Speaker, will the gentleman yield?

Mr. FISH. I cannot yield.

Mr. MCFARLANE. I just want to correct the gentleman's statement.

Mr. FISH. I do not yield, and there is no statement to correct. Later on I voted to override the veto of President Coolidge, when the present adjusted-service certificate bill was enacted into law. I voted to sustain the President on the veto day before yesterday only because I am opposed to any printing-press method of paying the bonus, no matter in what degree it may be. I am not criticizing my colleagues for voting that way. It may be that it would not bring about inflation. Certainly it is a dangerous principle to invoke, but if it did bring about ruinous inflation, I, for one, would not have to apologize a year or two hence. Printing-press money, once started, is apt to bring economic disaster to the American people, as it has wherever it has been extensively tried, and particularly to the wage earners. There is no more reason to start the printing presses to pay the veterans than to pay for the Army and Navy, salaries of Members of Congress, or even to liquidate the national debt. It is just playing with fire.

I am making this statement because I believe in the immediate cash payment of the bonus before the Congress adjourns, whether it is through the funds appropriated for public works or the Vinson bill or any other bill, as long as it is not an inflationary measure, providing for printing-press money. I am not a prophet, and I have no way of knowing what the Senate proposes to do, or what other Members of Congress propose to do, but I believe it is a relief measure, as most veterans are in debt and in need, and that the ex-servicemen are right in being apprehensive, if it is not paid now, that in a few years from now the adjusted-service certificates may be paid on the basis of a third of the present value of the dollar, and it may be on the basis of 20 cents on the dollar or less.

The administration by reducing the value of the dollar to 59 cents has already violated the contract made with the veterans in 1925. When the President says that there is no difference between the able-bodied veterans who served at a dollar a day and those employed at home during the war at $10 a day and upward, of course I differ

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with him. That issue was settled by the Congress 10 years ago. We could not adjust the full compensation, but we passed the adjusted-service certificate bill, and that settled the matter forever. The President goes out of his way to deliberately rebuke and pillory the World War veterans and particularly those who served on the battlefields of France at the risk of their lives. I do not agree with the President's contention that the terms of the contract entered into with the World War veterans must be exacted to the last pound of flesh without modification or change. The President went into great detail regarding the original reason, purpose, and value of the certificates. It is apparent the only contract that the new-deal repudiation administration holds sacred and insists on keeping is that with the veterans.

I am introducing the following resolution, which will go to the Ways and Means Committee, and probably will not be acted on, but at the end of 30 days I propose to file a petition at the desk and ask that the committee be discharged from further consideration and the resolution be reported to the House for action before adjournment of Congress.

House Joint Resolution

Whereas billions of dollars have been doled out of the Treasury of the United States to various groups in the country; and

Whereas the World War veterans are in debt and in need; and

Whereas the veterans are apprehensive that, due to the unstable dollar and indications of inflation, the obligation due them may be paid in further depreciated currency; and

[8190] Whereas the new-deal administration has repudiated most of its contracts, obligations, and pledges but insists on singling out the agreement made with the veterans for payment of the adjusted-service certificates as sacred and unchangeable like the laws of the Medes and the Persians; and

Whereas one billion dollars have been allocated out of the public-works fund to Rexford Guy Tugwell to undertake further unsound and socialistic experiments and to put the Government into further competition with private industry: Therefore be it

Resolved, etc., That the adjusted-service certificates shall be paid as a relief measure on or before July 1, 1935, in cash, out of funds hertofore appropriated by the Congress for public works, amounting to $4,000,000,000, and unexpended funds of approximately $1,000,000,000 carried over from the last Congress; and be it further

Resolved, That payment be made in accordance with the provisions of the so-called "Vinson bill" sponsored by the American Legion and reported by the Ways and Means Committee.

[Applause.]

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent to address the House for 3 minutes.

The SPEAKER. Is there objection?

Mr. ZIONCHECK. Mr. Speaker, I reserve the right to object. I am going to object to any further requests after this one.

Mr. DUNN of Pennsylvania. Oh, let me have just 1 minute.

Mr. ZIONCHECK. I shall not object to 1 minute for the gentleman from Pennsylvania [Mr. DUNN].

The SPEAKER pro tempore. Is there objection?

There was no objection.

Mr. McCORMACK. Mr. Speaker, in connection with the remarks made by the distinguished gentleman from Texas [Mr. BLANTON] about what appeared in the newspapers this morning, Mr. Green,

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president of the American Federation of Labor, appeared before the Committee on Ways and Means this morning in hearings being conducted on the extension of the N. R. A. I am sure that if the gentleman from Texas and others will read his testimony delivered this morning, they will find that what appears in the newspapers has been fully clarified along the lines we would expect from such a constructive mind as that of President Green of the American Federation of Labor. Naturally, reading the newspaper account of his remarks would have a disturbing effect, as it did upon myself, and my friend, the gentleman from Minnesota [Mr. KNUTSON], interrogated Mr. Green, as did the gentleman from Arkansas [Mr. FULLER] and myself. We asked him several questions, and I think his answers clarified the situation completely.

Mr. KNUTSON. Mr. Speaker, will the gentleman yield?

Mr. MCCORMACK. Yes.

Mr. KNUTSON. Mr. Green has promised to submit the speech that he made at Madison Square Garden yesterday afternoon and make it a part of the hearings held before the committee this morning.

Mr. BLANTON. Mr. Speaker, will the gentleman yield?

Mr. MCCORMACK. Yes.

Mr. BLANTON. The gentleman does not deny that Mr. Green made the statement that he would call a general strike?

Mr. MCCORMACK. I do deny that. He says he did not make that statement.

Mr. BLANTON. The metropolitan press this morning, not only the Herald, but the other daily papers, make the statement that he did.

Mr. MCCORMACK. I do not think they made that statement. The press, as I noticed it, said it was short of a general strike.

Mr. BLANTON. Did he deny that he said they must mobilize to keep Congressmen from being elected who voted against these measures?

Mr. MCCORMACK. Mr. Green did not say anything of that kind.

Mr. BLANTON. Did he say that Judge Parker was not confirmed by the Senate and that every Senator who voted for the confirmation of him failed to come back?

Mr. MCCORMACK. I am not going to pass on what Mr. Green said or did not say.

Mr. BLANTON. Of course, we cannot believe much that we see in Hearst's Washington Herald, but when all of the reputable morning newspapers carried practically the identical statement——

Mr. MCCORMACK. I do not want the gentleman to put into my time any criticism of a newspaper or anybody else.

Mr. BLANTON. It could not have been wrong in all these particulars.

Mr. MCCORMACK. I like to go along the line of not criticizing, but expressing my own views, and if I have a difference with anyone, to express my differences impersonally.

Mr. TREADWAY. Will the gentleman yield?

Mr. MCCORMACK. I yield.

Mr. TREADWAY. With reference to the remark made by the gentleman from Minnesota [Mr. KNUTSON], that Mr. Green intends to make his speech a part of the record before the Ways and Means Committee, it appears in the press that the remarks that are being referred to now in relation to the strike were not in the printed speech. I do not know

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whether Mr. Green brought that out before the committee or not. I assume that Mr. Green intends to print all he said in New York.

Mr. McCORMACK. Of course, I cannot answer that. All I know is that Mr. Green appeared before the committee in connection with the N. R. A. bill, and he was asked certain questions; and Mr. Green's answers absolutely satisfied me as to what his state of mind was—a state of mind which I was satisfied he was possessed of.

The SPEAKER pro tempore (Mr. O'CONNOR). The time of the gentleman from Massachusetts [Mr. McCORMACK] has expired.

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent to proceed for 1 additional minute.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

Mr. BLANTON. Reserving the right to object to ask a question——

The SPEAKER pro tempore. Is there objection?

Mr. SCHNEIDER. Mr. Speaker, the regular order.

The SPEAKER pro tempore. The Chair will, if necessary, object himself to such a reservation of objection as that. Is there objection to the request of the gentleman from Massachusetts?

Mr. BLANTON. I ask unanimous consent that the gentleman's time be extended for 2 minutes, as I want to ask him a question.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts [Mr. McCORMACK] as amended, that he may proceed for 2 additional minutes?

There was no objection.

Mr. BLANTON. Will the gentleman yield?

Mr. McCORMACK. I yield.

Mr. BLANTON. Is it not a fact that the press reports indicate that in lieu of his prepared speech, Mr. Green made this speech at Madison Square Garden, which the press reports him to have made; he put his prepared speech down and made his speech and altogether about 50,000 people heard him?

Mr. McCORMACK. I am not going to enter into any controversy whether the press quoted him correctly or not. All I am stating is that Mr. Green's position, expressed before the Committee on Ways and Means, is consistent with what I thought it would be. When I read the papers this morning I felt that either he extemporaneously expressed his thoughts incorrectly or that he was misquoted, quite honestly, by those who were present. In any event, Mr. Green has clarified his situation before the Committee on Ways and Means, which is the important thing, after all. His position is absolutely consistent with the man as I know him, a man who has always conducted himself constructively, particularly during this depression; a man who has evidenced real leadership. I say that impersonally, not to flatter the gentleman, because personally he does not mean anything to me one way or the other, although I have the greatest respect for him. I look the cold facts in the face. If the American Federation of Labor were not following constructive leadership we would have been in trouble long ago. Two [**8191**] years ago, when some farmers threatening a strike tried to have the American Federation of Labor join with them, the American Federation of Labor refused to do so. Just visualize what would have happened if, instead of that kind of constructive leadership, we had had at that time a

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leadership of "strike, strike, strike." Instead of trying to resist and trying to prevent strikes and to arbitrate, and using the strike as a last recourse, if the American Federation of Labor had a leadership of engaging in constant strikes, we would have had a chaotic condition in this country during the time of this depression. [Applause.]

CONGRESSIONAL RECORD, HOUSE—JUNE 3, 1935

(79 Cong. Rec. 8536)

POWER OF CONGRESS TO LEGISLATE ON LABOR AND SOCIAL PROBLEMS

Mr. MONAGHAN. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD and include therein a speech by our colleague the gentleman from Massachusetts [Mr. CONNERY] delivered over the radio.

The SPEAKER. Is there objection to the request of the gentleman from Montana?

There was no objection.

Mr. MONAGHAN. Mr. Speaker, under the leave to extend my remarks in the RECORD, I include the following speech of Hon. WILLIAM P. CONNERY, Jr., over Station WEVD, May 31, 1935:

The question of the moment is, Shall the Congress of the United States, elected by the people and possessing a real knowledge of the conditions existing among our people, be denied the right to legislate constructively for the best and humane interests of the people of the United States, or shall the United States Supreme Court a body of nine men, highly estimable and learned in the way of the law, be allowed to set aside continually the mandate of the people and the action of the Congress of the United States? In passing it might be well for my listeners to know that none of these men were elected by the people. They are appointed by a President of the United States and confirmed by action of the Senate of the United States.

I will agree that the Congress should not enact legislation which is beyond the powers conferred upon the Congress by the Constitution. I do not complain against the constitutional limitations placed upon the Congress. I do complain against a system wherein it takes 2 years before the Congress is advised that its action in enacting certain legislation is contrary to the Constitution.

At this time it might be well for me to direct your attention to the conditions which would ensue if the Supreme Court, in its wisdom, saw fit to render a decision similar to that recently rendered in nullifying the National Recovery Act at a time when the Congress was not in session. Can you visualize the condition in which the country would find itself?

In these days, with some twelve or more millions of our workers unable to secure profitably employment, when we have some twenty millions or more, or about one in every six of our entire population dependent upon Government relief, is it too much to expect that the learned members of the Supreme Court should find some way of advising the Congress that the legislation which they are considering enacting, or at least advising the Chief Executive that the legislation which the Congress has enacted and which is awaiting his signature, is unlawful and unconstitutional?

However, if it is constitutional for the United States courts to enjoin workers in New York City from refusing to work upon a product produced in Indiana, as they did some years ago, because it was then contended that the product of the workers in Indiana, when delivered at a building site in New York City, and even until it was later placed in a building in New York City, was still in interstate commerce, then certainly woolens, leathers, boots and shoes, and other products produced in my State, and through interstate commerce delivered in New York City, are amenable to regulation in interstate commerce.

The Constitution specifically grants to the Congress the right to regulate interstate commerce.

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The recent decision of the Supreme Court in finding that the Congress had delegated unwarranted powers to President Roosevelt has created a chaotic condition in American industry comparable only to those conditions which existed when the present administration took office in March 1933. This decision has not only placed the death notice on the National Industrial Recovery Act, but many contend that the reasoning pronounced by the Supreme Court in the National Industrial Recovery Act decision will also nullify and set aside the Agricultural Adjustment Act, the Reciprocal Tariff Act, and the recent $4,000,000,000 Work Relief Act.

In substance, all of the legislation enacted for the better protection of the toilers of America since the advent of the present administration has either been nullified or is greatly endangered.

[8537] The result is that at the present moment many Members of the Congress, supported by a large portion of our people, are advocating an amendment to the Constitution whereby the States would specifically delegate to the Congress the constitutional authority to legislate in the matter of maximum hours of work, minimum rates of wages, and economic liberty for the toilers in that they would be authorized to enter into collective bargaining with their employers.

To my mind, while such an amendment to the Constitution is proper and would be helpful I am inclined to the belief that it would take too long a time to prevail upon 36 State legislative bodies to enact the necessary legislation.

It is my belief that Congress can, if it will, constitutionally enact legislation which is necessary to protect our workers and advance the humane interests of all of our people.

The battle to secure through legislative enactment protection for the interests of the toilers is not new. It is but a continuation of the fight which has raged ever since man was freed from serfdom. The fight in those days, many centuries ago, was the question of human rights above property rights. That fight has yet to be won.

The Civil War was fought over the question whether man should be free or be enslaved. In the days prior to the Civil War our colored population were held in slavery for the enrichment of a comparatively few cotton planters. Today, despite the fact that all our people are free in that they have the right to work and live where they please and are upon a basis of equality in electing public officials, there are many who contend that our toilers live in virtual economic slavery in that they are denied an income which will provide a decent standard of living for themselves and their families and too often they are denied the right of collective bargaining. In fact, legally, we find that while our Government recognizes the right of collective action for those possessing property in that we issue corporate charters in order that the owners of the corporation may act collectively and bargain collectively, this privilege is denied to the workers employed by these same corporations.

The question which confronts the Congress and the American people at this moment is, Can the Congress constitutionally enact legislation which will protect the workers in one State from being reduced to penury and pauperism by the willingness or the necessity of workers in other States producing goods, articles, or commodities which are shipped in interstate commerce into another State and sold in that State for prices which are less than the costs of production in the other State, thus depriving the workers of that State of employment at decent wages and working a reasonable number of hours per week?

The Congress, realizing that we have some twelve or more millions of workers unable to secure work, wishes to shorten the number of hours of those employed so as to distribute among those unable to secure work employment at wages which will permit of the workers being self-sustaining. Under the terms of the recent decision of the Supreme Court, many contend that the Congress has not the power to interfere in the matter of hours and wages. I will admit that such contention is true insofar as it relates wholly to those who are engaged in intrastate trade—that is, trade which emanates wholly within one State and which trade does not use any product which has entered or enters into interstate commerce.

However, I am advised that the proportion of our trade which comes wholly within the terms of intrastate trade provides employment for less than 20 percent of our workers.

There are but few products which we use in our daily life that are wholly produced and consumed within the confines of one State. The cotton which we use is produced in our Southern States, and may be spun, may be woven, and may be fabricated either in some Southern State or more likely in some of our North

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Atlantic States. For many years child labor and pauper wages have been outlawed in most of our Northern States. The same is not true, however, of all of our States.

Recently, while delivering an address on the floor of the House of Representatives, protesting against the exploitation of child labor by unscrupulous employers, I was challenged by a Member of one of the Southern States who contended that there wasn't any child labor or exploitation of workers in the textile mills of the Southland. However, in answer to a question of mine he admitted that he had himself gone to work in a textile mill at the age of 9 and he had received the munificient wage of 5 cents per day. Naturally, his protestations and his championing of the textile mill owners of the Southland did not make much of a hit with Members of the House of Representatives.

The Congress in enacting the National Industrial Recovery Act sought to and did accomplish the elimination of child labor and prevented the continued exploitation of our youth; it did secure a reduction in the hours of labor from around an average of 50 to something less than 40 per week; it did provide a minimum hourly wage of something in excess of 35 cents per hour in place of the 10 and 12 cents per hour which were paid in too many places in our country. It is true that it would have accomplished much more if those entrusted with the administration had not set aside the evident intent of the Congress which was that the representatives of the workers should have equal representation with industry in the administration of the codes of fair competition.

The Senate of the United States had specifically acted on the question of company unions and voted by a large majority against language which would have legalized them. However, with big business in full control and the workers denied opportunity of action, those intrusted with the administration of N. R. A. not only recognized but, I regret to say, I feel that they encouraged their formation.

When you place in high authority in the administration of the N. R. A. representatives of the Cigarette Trust and other monopolies, those who immediately upon the Supreme Court nullifying the N. R. A. make possible the distribution of the products of workers at less than the costs of production, which means a lowering of the miserly wages of 25 cents per hour, as is now provided, it is hard for the toilers of America to expect much constructive or humane consideration.

It is my belief that the Congress can, if it will, constitutionally enact legislation which will provide that protection which the workers of our country must have.

The Congress has the unquestioned constitutional right to regulate interstate and foreign commerce. In carrying out this power the Congress has the right to license those who engage in interstate and foreign commerce. Likewise, the Congress can specifically declare the conditions under which these licenses can be granted.

It is my intention to present for the consideration of the Congress a bill whereby those who engage in, those who handle or who receive goods, articles, or commodities which enter into interstate commerce shall be licensed by the United States Government.

My bill will create a Federal licensing commission, which commission, as an agency of the Congress, shall be authorized and directed to regulate interstate commerce.

It is true that those who do not transport, handle, or receive goods, articles, or commodities which enter or have entered in interstate commerce will not be affected by this legislation. However, I believe it will affect more than 80 percent of all of those engaged in American trade and commerce. With decent weekly wages, maximum hours not to exceed a number which will permit of steady employment of all of our workers, and the economic liberty to bargain collectively established for this 80 percent of our workers, it is my strong conviction that between the collective action of the workers who are thus freed from economic bondage and public opinion the other 20 percent of our workers will be benefited.

My bill will provide that as a condition precedent to the issuance or the continuance of such a Federal license to transport, handle, or receive those goods, articles, or commodities which enter into interstate commerce that such licensee, shall agree that they will not handle any goods, articles, or commodities which are produced by child or penal labor; by workers employed more than 30 hours per week except where the Commission finds that exemptions are necessary; by workers who receive weekly wages which are not sufficient to maintain a decent standard of living for themselves and their families; by workers who are denied

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economic liberty in that the employer refuses to bargain collectivly with the chosen representatives of the majority of his workers.

In order that there may be no possible infringement of the right of free press newspapers, magazines, and operators of radio broadcasting station will be exempt from the act. Likewise agricultural or farm products processed for first sale by the original producer will be exempted from the provisions of this bill.

I trust that I will have the cooperation of my listeners in securing favorable consideration in the early enactment of this legislation.

I thank you.

WAGNER-CONNERY BILL

Mr. CONNERY. Mr. Speaker, I ask unanimous consent to address the House for 4 minutes.

The SPEAKER. If there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. CONNERY. Mr. Speaker, I have taken the floor at this time in order to get into the RECORD for the information of the Members of the House some questions in regard to the constitutionality of the Wagner-Connery bill, the labor relations bill. I know there will be a great deal of discussion about that, and I would like to have this in the RECORD before the bill comes up in the House, as we confidently hope it will within the near future.

The pending Wagner-Connery bill, creating a National Labor Relations Board, rests upon a constitutional basis which is not adversely affected by the recent decisions of the Supreme Court in the Railway Retirement and the Schechter cases. Upon the contrary, the implications of those decisions, and the specific holding of the Supreme Court in previous decisions now cited with approval, make it clear that what is sought to be done in the Wagner-Connery bill is within the constitutional power of Congress. In the present situation, the need for the Wagner-Connery bill, if anything, is enhanced rather than diminished.

Section 7 (a) of the National Industrial Recovery Act reads as follows:

> Every code of fair competition, agreement and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize [8538] and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; * * *

Section 7 (a) was not self-executing; it did not forthwith confer any new legal rights upon employees, nor impose any new legal duties upon employers. Until an employer became subject to a code of fair competition approved by the President, he could still, without violating any Federal law, discharge an employee for union activity or otherwise interfere with the self-organization of his employees for the purposes of collective bargaining. This was so, because section 7 (a) did not directly prohibit employers from interfering with the self-organization of employees, as Congress might well have done, but provided only that prohibitions of this type of conduct should be included in every code of fair competition.

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The Supreme Court held that the code-making process under section 3 of the Recovery Act was invalid because it constituted an attempt by Congress to delegate legislative power to the President "to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry." The protection to employees which Congress sought to establish in section 7 (a) is nullified by the decision in the Schechter case, not because the subject matter of section 7 (a) is beyond the congressional power of regulation, but because the codes of fair competition, in each of which the provisions of section 7 (a) have been embodied, have been knocked out by that decision.

This difficulty on the score of improper delegation, which for the reasons stated indirectly resulted in the invalidation of section 7 (a), is entirely removed in the Wagner-Connery bill. In that bill Congress specifically prohibits certain unfair labor practices, which by fair interpretation would constitute infringements upon the substantive rights of employees declared in section 7 (a). These prohibitions, and the substantive rights are made applicable, to the extent of Congress' power under the commerce clause, to employers and employees irrespective of whether the industry in question is subject to a code of fair competition. The bill, therefore, is entirely independent of the code-making process, and stands on its own constitutional footing quite apart from the ultimate disposition of the pending legislation affecting the National Recovery Administration.

It is significant that throughout the decision in the Schechter case the Court drew a sharp distinction between the delegation of legislative power and the Executive procedure provided in the National Industrial Recovery Act, on the one hand, and the formulation, on the other hand, of a specific congressional policy to be administered by boards with procedure of a quasi-judicial nature, such as the Federal Trade Commission, the Interstate Commerce Commission, the Radio Commission, and the Federal Tariff Commission. Perhaps the most striking example given by the Court, and at the same time the closest analogy to the proposed National Labor Relations Board, is the Federal Trade Commission Act, which declared to be unlawful "unfair methods of competition," a phrase which, as the Court recognized, "does not admit of precise definition, its scope being left to judicial determination as controversies arise." The Court goes on to say:

> What are "unfair methods of competition" are thus to be determined in particular instances, upon evidence, in the light of particular competitive conditions and of what is found to be a specific and substantial public interest. * * *
>
> To make this possible, Congress set up a special procedure. A Commission, a quasi-judicial body was created. Provision was made for formal complaint, for notice and hearing, for appropriate findings of fact supported by adequate evidence, and for judicial review to give assurance that the action of the Commission is taken within the statutory authority. * * *
>
> In providing for codes, the National Industrial Act dispenses with this administrative procedure and with any administrative procedure of an analogous character.

The Board set up under the Wagner-Connery bill is just such a tribunal as the court describes. It is a quasi-judicial body, which acts upon formal complaint, after due notice and hearing. Provision is made for appropriate findings of fact, supported by adequate evi-

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dence and for judicial review to give assurance that the action of the Board is taken within its statutory authority.

Furthermore, in view of the court's approval of the Federal Trade Commission Act, the constitutionality of the Wagner-Connery bill on the score of delegation is beyond question, because the unfair labor practices in section 8 of the bill are defined with precision, whereas the Federal Trade Commission Act broadly prohibits unfair methods of competition.

Turning now to the interstate commerce aspect, the Wagner-Connery bill is on firm ground as a permissible regulation within the commerce clause of the Constitution.

The decision in the railway retirement case did not turn on a distinction between intrastate and interstate commerce, as has been erroneously asserted, but proceeded on the ground, whether rightly or wrongly, that legislative provision for pensions to retired railway employees was so remotely related to the facilitation and promotion of interstate commerce as not to amount to a regulation thereof. The Court expressly affirmed its previous decision in *Texas & New Orleans R. R. Co.* v. *Railway Clerks*, 281 U. S. 548, coming up under the Railway Labor Act—

> Upon the express ground that to facilitate the amicable settlement of disputes which threatened the service of the necessary agencies of interstate transportation tended to prevent interruption of service and was therefore within the delegated power of regulation.

In that case a railway brotherhood, composed of railway clerks who were not themselves physically engaged in interstate transportation, sued to restrain the railroad from interfering with the right of its employees to self-organization and to designate representatives for collective bargaining in violation of the Railway Labor Act of 1926. The lower court gave equitable relief of the sort contemplated in the Wagner-Connery bill by ordering the company (1) to disestablish its company union as representative of its employees; (2) to reinstate the Brotherhood (which was the recognized representative chosen by the majority before the company began its unlawful interference) as the representative of all employees until they should make another free choice; and to restore to service and to stated privileges certain employees who had been discharged for activities in behalf of the Brotherhood. The Supreme Court in a unanimous opinion affirmed the decree of the lower court.

The decision in the Schechter case is limited, on the interstate commerce point, to the attempted regulation of wages, hours, and certain trade practices in the case of a New York company engaged in the business of slaughtering chickens, which were bought almost entirely in the State of New York and sold exclusively to buyers in the same State. The Supreme Court held that in such a business the attempted regulations had no direct relation to interstate commerce and were therefore invalid. The Wagner-Connery bill is not materially affected by this decision for two reasons: (1) The decision does not touch industries or businesses which are interstate in character; (2) the regulations in the bill are of an entirely different legal nature from those in the Schechter case and have many times been recognized by the Supreme Court itself as having a direct effect upon the free flow of interstate commerce.

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First. The Schechter decision is confined, as stated above, to a business which was wholly intrastate in character. The Court, on the other hand, reaffirmed the undoubted power of Congress to regulate businesses and industries which are interstate in character. The Court expressly pointed out that not only were the instrumentalities of interstate commerce subject to regulation but that those industries in which the products flowed in a continuous stream from State to State were likewise subject to regulation. It follows that any industry engaged in the transportation of goods between the States would be subject to the provisions of the bill. So **[8539]** also all the large manufacturing or processing industries, with wide-spread interstate ramifications, would be subject to the terms of the bill. In these industries raw materials are secured from all States of the Union or from foreign countries, and the products manufactured or processed are shipped out again to every State and to foreign countries. The whole process plainly constitutes a continuous movement of goods in interstate commerce within the meaning of the Court's decision.

Second. Of perhaps greater significance is the second reason why the Wagner-Connery bill is not affected by the Schechter decision, namely, that the regulations provided in the bill are of a different legal character from those before the Court in the Schechter case. The bill thus rests upon a constitutional basis entirely different from that urged by the Government in the Schechter case and not considered by the Supreme Court in that case. The provisions of the bill are designed to remove burdens and obstructions to interstate commerce arising out of strikes and other forms of industrial unrest.

There can be no question but that industrial strife burdens the flow of commerce among the States. This fact has received express recognition by the Supreme Court itself in such well-known cases as *In re Debs* (158 U. S. 564); *Duplex Printing Press Co.* v. *Deering* (254 U. S. 443); *American Steel Foundries* v. *Tri-City Central Trades Council* (257 U. S. 184); *Coronado Coal Co.* v. *United Mine Workers* (268 U. S. 295); and *Bedford Cut Stone Co.* v. *Stone Cutters Association* (274 U. S. 37). Especially is the burden on interstate commerce of industrial strife significant in times of depression or periods of recovery. As recent experience has demonstrated, a single strike in a large industry at such a time raises grave dangers of throwing the whole economic system out of gear and retarding recovery by many months.

The provisions of the Wagner-Connery bill are aimed to remove these obstructions to interstate commerce. The bill accomplishes this result in two ways: First, it is a well-known fact that many of the most serious and violent industrial disturbances arise out of the resistance by employers to self-organization among their employees or out of the refusal by employers to accept the procedure of collective bargaining. These issues have been paramount in many cases which have come before the Supreme Court, including the Debs case, the Coronado case, and *International Organization* v. *Red Jacket C. C. & C. Co.* (18 Fed. (2d) 839, cert. den. 275 U. S. 536). The bill by compelling employers to refrain from interference with self-organization of employees and to accept the procedure of collective bargaining thus directly eliminates the causes of much industrial strife. Second,

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other industrial disturbances arise out of the struggle between employers and employees over the terms of the wage bargain. The bill by protecting employees in their designation of representatives and by compelling employers to sit down in conference with those representatives establishes the machinery of a method of proved effectiveness for the amicable adjustments of disputes and grievances. So completely accepted has this conference procedure for avoiding industrial conflict become that it constitutes a vital part of virtually every effort in the States and foreign countries to set up machinery for the peaceful settlement of labor disputes.

The Supreme Court has recently expressly ruled that provisions similar to those embodied in the bill have, for the reasons stated, a direct relation to interstate commerce, and are therefore valid. In *Texas & New Orleans Railroad* v. *Brotherhood of Railway Clerks* (281 U. S. 548), which, as has already been noted, was cited with approval in the recent Railway Retirement case, the Court ruled that the provisions of the Railway Labor Act of 1926, applying to the railroad industry substantially the same regulations as provided in the Wagner-Connery bill, were valid regulations under the commerce power, not only as to employees actually engaged in interstate transportation but also to clerks, ticket sellers, and other employees not physically so engaged. The power of the Federal Government to regulate industrial relations as the means of avoiding obstructions to commerce has likewise been approved by the Supreme Court as to other industries in a number of decisions holding that a strike which threatens to burden interstate commerce is subject to regulation under the antitrust laws. Two of these decisions—*Coronado Coal Co.* v. *United Mine Workers* (268 U. S. 295) and *Bedford Cut Stone Co.* v. *Stone Cutters Association* (274 U. S. 37)—were expressly reaffirmed by the Supreme Court in the Schechter decision. Thus, in the Bedford case, the stonecutters refused to work upon stone which had been shipped into the State from quarries in other States where nonunion labor was employed. The stone upon which the cutters refused to work was no longer in the stream of commerce or destined for use outside the State in which it rested. The Supreme Court held that the activities of the stoncutters constituted a combination prohibited by the Sherman Act, at pages 46, 47:

> That the means adopted to bring about the contemplated restraint of commerce operated after physical transportation had ended is immaterial (citing cases). The product against which the strikes were directed, it is true had come to rest in the respective localities to which it had been shipped, so that it had ceased to be a subject of interstate commerce * * * In other words, strikes against the local use of the product were simply the means adopted to effect the unlawful restraint.

In *Coronado Coal Co.* v. *United Mine Workers* (268 U. S. 295), another celebrated case under the antitrust law, there was a strike of union men in the Arkansas mines of the Coronado Coal Co. The company broke a union contract, declared an open shop (avowedly to reduce the cost of production), shut down the mine, ordered its union employees to vacate company houses, and reopened with nonunion men. Considerable violence followed. The Court found the strikers and the district officers of the union guilty of a conspiracy in restraint of interstate commerce, based upon evidence which the Court held

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sufficient to sustain a finding that the purpose of the defendants was to stop the production of nonunion coal and prevent its shipment to markets in other States, where it would by competition tend to reduce the price of the commodity and affect injuriously the maintenance of wages for union labor in competing mines. From the point of view of constitutional power, of course, if a strike has the intent or necessary effect indicated by the Court, it is immaterial whether the local means adopted were lawful or tortuous.

How is the Federal Government to deal with the vexing problems of industrial disturbance or strife which in fact burdens and obstructs commerce, whether so intended or not, and where, as is increasingly the case, such obstructions are traceable to the denial of the right of employees to organize, the refusal of employers to accept the procedure of collective bargaining, or the absence of machinery for the amicable adjustments of disputes over wages and working conditions? The solution lies neither in compulsory arbitration, which has never been acceptable to the American people, nor in government by labor injunction, now effectively restrained by the Norris-LaGuardia Act, nor in subjecting labor organizations to the shifting canons of the antitrust laws, which were never intended by Congress to be applied against them. The Wagner-Connery bill goes to the heart of the problem by eliminating specific well-recognized causes of industrial disturbances substantially burdening or obstructing commerce, and by mitigating or eliminating such obstructions where they have occurred.

It is clear that unfair labor practices which tend to provoke industrial strife substantially burdening interstate commerce may be enjoined before any actual obstruction to commerce arises. Civilized law is preventive as well as punitive. As Chief Justice Taft said in the first *Coronado* case (259 U. S. 344):

> If Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain, or burden it, it has the power to subject them to national supervision or restraint.

For this reason the Wagner-Connery bill aims to eliminate practices on the part of employers that tend to provoke manifestations of industrial strife recognized in the Bedford, Coronado, and other cases as directly and substantially affecting interstate commerce, and to substitute the orderly processes of collective bargaining, thereby making the appropriate collective action of employees an instrument of peace rather **[8540]** than of strife, as the Supreme Court said in the Texas case. The appropriateness and success of such regulation as is here provided is amply demonstrated by the experience with the railroads of the country and the experience of the National War Labor Board during the World War.

To sum up the point on interstate commerce, the Schechter decision relates only to a business engaged solely in intrastate commerce and applies only to regulations of wages, hours, and certain trade practices in such intrastate business. It does not affect in any way the application of the Wagner-Connery bill to industries and businesses which are interstate in character and does not touch in any way the validity of regulations designed to remove obstructions to the free flow of commerce by eliminating and alleviating industrial strife and unrest.

I close with this observation: We are faced now with a barrage of

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propaganda from inspired sources to the effect that in view of the recent Court decisions the Congress has no alternative but to abandon its pending legislative program and go home. Implications are being read into those decisions in an endeavor to make them applicable to other situations and problems not before the Court. The President, in his press conference on Friday, painted a vivid picture of national impotence to cope with national problems which would be our plight, if the Supreme Court in future cases does not limit its decision in the Schechter case to the particular facts before the Court.

The Supreme Court, in Rathbun against United States, which case was decided on the same day that it handed down its opinion in the Schechter case, invoked the following language from the opinion of Chief Justice Marshall in *Cohens* v. *Virginia* (6 Wheat. 264, 399):

> It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

In view of this salutary reminder by the Supreme Court that its decisions are controlling only on the facts of the case before it, we are guilty of no disrespect for that tribunal in pressing for the passage of the Wagner-Connery bill. I have no doubt that Congress believes in the principles and purposes of the bill, and this being so, the Congress would be shirking its plain duty if dubious, and I believe unwarranted implications from recent court decisions stampede it into an abandonment of its legislative functions. This is no time to yield to defeatist talk and haul down the flag.

The SPEAKER. The time of the gentleman from Massachusetts [Mr. CONNERY] has expired.

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Union Calender No. 328

74TH CONGRESS
1ST SESSION

S. 1958

[Report No. 972]

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1935

Referred to the Committee on Labor

MAY 21, 1935

Reported with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed

JUNE 5, 1935

Recommitted to the Committee on Labor and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

AN ACT

To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND DECLARATION OF POLICY

SECTION 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of ownership and out of numerous other modern industrial conditions, impairs and affects commerce by creating variations and instability in wage rates and working conditions within and

between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity between production and consumption, reducing the amount of commerce, and tending to produce and aggravate recurrent

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business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial unrest which burden and affect commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

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DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

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(4) The term "representatives" includes any individual or labor organization.

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(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created ~~as an independent agency in the executive branch of the Government~~ *in the Department of Labor* a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but

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their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation

of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board

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shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as

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amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regula-

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tions as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from

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permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., *Supp. VII*, title 15,

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secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual em-

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ployee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize

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any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part

the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place

and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon

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all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has compiled with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any unfair labor practice,

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then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and

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shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be

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excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judg-

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ment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such tem-

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porary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

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(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" ~~(U. S. C.,~~ *approved March 23, 1932* (*U. S. C., Supp. VII*, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary

and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of

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contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place

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of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

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SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more

than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., *Supp. VII*, title 15, sec. 707 (a)), as amended from time to time, or of section 77 ~~(b)~~ *B*, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application

of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Passed the Senate May 13 (calendar day, May 16), 1935.

Attest: EDWIN A. HALSEY,
Secretary.

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CONGRESSIONAL RECORD, HOUSE—JUNE 6, 1935

(79 Cong. Rec. 8815)

NATIONAL INDUSTRIAL RECOVERY ACT

Mr. WOOD. Mr. Speaker, I renew my request.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. WOOD. Mr. Speaker, I desire to address the House a few minutes with reference to the National Industrial Recovery Act, the recent Supreme Court decision, and subsequent happenings. I think no man will disagree with me when I say that the enactment of the national recovery law was for a noble purpose. Fundamentally it was for the purpose of stabilizing wages, increasing the ability of the Nation to consume, shortening the hours of labor, and for the purpose of creating a wider spread of employment.

A great deal has been said about the National Recovery Act since its enactment. I must say, Mr. Speaker, that in spite of all its imperfections, in spite of its maladministration, to my mind the National Recovery Act and the Agricultural Adjustment Act are the two basic measures that have been more responsible for the degree of national recovery that we have attained in the past 2 years than all the rest of the legislation that has been passed by the Seventy-third and the Seventy-fourth Congresses.

Opponents of the National Recovery Act on the Republican side of the House and a great many on the Democratic side have been attempting to leave the impression that the codes of fair competition and all the rest of the machinery, administrative and otherwise, of this great measure had long since collapsed. That drastic decision of the Supreme Court, which declared this law unconstitutional, has abridged the right of Congress to enact certain social legislation.

Prior to that decision, as I said before, they tried to leave the impression the codes had broken down, that there was no attention paid to the National Recovery Act, that we had no enforcement. I will agree that the enforcement of the National Recovery Act was very negligent because of the fact that out of nearly 600 codes of fair competition the employers of this Nation were almost the absolute dictators, for in only 51 codes did labor have any representation whatever. In spite of that, however, great progress had been made, and although we did not reach the goal to which we aspired when this law was passed, no one can deny that wonderful progress was made.

Now, let us see whether these codes had broken down prior to this decision of the Supreme Court. Throughout this Nation at this time wholesale reductions of wages are being instituted by various kinds and types of employers, hours of labor are being increased, and men's right to organize and bargain collectively are being very determinedly questioned by the employer.

Mr. PIERCE. Mr. Speaker, will the gentleman yield?

Mr. WOOD. I yield for a question.

Mr. PIERCE. And very materially since the decision?

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Mr. WOOD. Since the decision of the Supreme Court of the United States; yes. Now, of course, these unfair employers who reaped the benefit of the National Recovery Act—and they admit that, because before the House Committee on Labor in the Seventy-third session, when we were considering the 6-hour bill, the representatives of 65 or 70 **[8816]** industries appeared before the committee. Without a single exception, these men, representing as they did large business enterprises, about all the large business enterprises of this Nation, admitted frankly that they were unable by and through their own organizations to stem the tide of cutthroat competition which they said existed; and they expressed great fear that if conditions existing at that time were allowed to continue very long they did not know what the future would hold. The representatives of the employers before the Committee on Labor painted the darkest picture I have ever gazed upon in my life. They were begging the President and the Congress to do something for them. They had admitted that their methods of administration of industry had broken down completely. They were begging this Congress and this Government to do something to save the Nation from destruction and despair.

The National Recovery Act was enacted. By and through the operation of this law employers were able to organize and solidify their trade associations throughout the United States. That law was so couched that while it did not compel an employer to join a trade association, yet if he did not join he must agree to abide by the minimum prices and conditions of the code, so there was nothing to be gained by an employer remaining outside of his employer's union or his trade association.

So the National Recovery Act enabled the employers to organize, enabled them to compel the unfair employers to cease and desist their cutthroat competition which they told the committee had brought about such a condition that they could not even get the cost of production.

What has been the result? Here is a copy of a letter I desire to read. This is sent by Mr. M. W. Borders, Jr., a very able attorney of Kansas City:

DEAR MR. HARDGRAVE: It occurs to me that it would be advisable for you to suggest to the members of the council that any drastic reductions in wages or curtailment in the number of employees as a result of the decision of the Supreme Court yesterday holding the N. I. R. A. invalid would be highly inadvisable at this time.

In the first place, it is my belief that most industries which have signed codes in the last 2 years did so in perfect good faith and with every good intention of carrying out the wage and hour provisions of the respective codes. Failure to observe the spirit of the codes in these particulars might be politically misconstrued.

In the second place, and perhaps more important, is the unfavorable effect that any such action might and probably would have upon the fate of the Wagner bill, the 30-hour-week bill, and the bill to amend the A. A. A. It is very questionable whether the sponsors of these bills can defend the constitutionality of any of these bills in their present form in view of the decision of the Supreme Court. At the same time, it is a certainty that these same sponsors will redouble their efforts to enact these subversive and antisocial bills if employers now give them the excuse that such legislation is necessary in order to protect labor and the public from the greed of employers. Every effort should now be made to urge upon Congress that these bills be not passed, first, because they would be unconstitutional and, second, because they are unnecessary in view of industry's broad-minded attitude.

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Furthermore, any ill-advised action on the part of employers at this time would give labor unions the excuse to urge employees to join the unions because they would then claim that the unions are the only protection which employees would have.

I do not mean to imply by the above that employers should not make such changes in the ranks of their employees as their seasonal demands require. I strongly counsel moderation at this time and that no drastic steps be taken.

Mr. Hardgrave, upon receiving this letter from his attorney, sent the following letter to members of the Kansas City Protective Council, which is an organization of employers:

I am attaching hereto copy of Mr. M. W. Border's letter with reference to yesterday's Supreme Court decision affecting the N. I. R. A.

Those of our associates with whom I have been able to discuss this matter today counsel moderation and care in changing hours and wages which have been in effect in recent months. It is our belief that the final chapter with reference to the labor section of the N. I. R. A. and other important features of the act will not be written until Congress adjourns.

We urge that business and industry so conduct themselves that their acts or policies will not incite Congress to enact new legislation or rewrite pending legislation which will be extremely burdensome to business and industry.

In the language of the street, let's carry along and not rock the boat for the time being. Certainly it is up to business to so shape its course that the radical element will have no excuse to condemn us.

Mr. PIERCE. Mr. Speaker, will the gentleman yield?

Mr. WOOD. I yield.

Mr. PIERCE. Does the gentleman see any solution except a constitutional amendment? Does the gentleman see constitutionality in the Wagner bill, the 30-hour bill, or even in the security bill that we passed?

Mr. WOOD. I have only the word and the opinion of the constitutional lawyers in Congress. The Wagner bill has been amended in 14 particulars and they say it will be constitutional.

I do not know what is going to be constitutional so long as we have the present set-up of the Supreme Court. These fine old gentlemen are very amiable men, but in their decision they reversed the opinion of the Supreme Court with respect to the Wright case.

Mr. COX. Mr. Speaker, will the gentleman yield?

Mr. WOOD. I yield.

Mr. COX. Does the gentleman by the language just used mean to indict the Supreme Court for the opinion it rendered a week ago last Monday.

Mr. WOOD. I certainly do not, and I did not intend to indict the Supreme Court. I may say to the gentleman it is my opinion the members of the Supreme Court are very high type men, but they are only human beings and citizens. There is no reason why I, as a Member of Congress, or you or any other man or woman should hold them up as superhuman, and say that anyone has the right to blaspheme God by placing these gentlemen on a pedestal. They are only human, and I reserve the right to criticize the members of the Supreme Court or anyone else, as a Member of Congress especially.

Mr. COX. Does the gentleman not accept the decision of the Supreme Court as the right interpretation of the law?

Mr. WOOD. No; I do not. I differ with the Supreme Court and I have the right to differ with them. The gentleman may agree with them if he wants to, but it is my prerogative to disagree with the

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Supreme Court. I do not think they are right and I have my own reason for so thinking.

Mr. Cox. Has the gentleman a legal background for his opinion?

Mr. Wood. No. I am not a lawyer, but I happen to have been affected by a number of previous decisions of the Supreme Court, and insofar as labor is concerned the Supreme Court decision of the other day does not coincide with their decision rendered in the Wright case in 1885.

[Here the gavel fell.]

Mr. Wood. Mr. Speaker, I ask unanimous consent to proceed for 10 additional minutes.

The Speaker. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. O'Connor. Will the gentleman yield?

Mr. Wood. I yield to the gentleman from New York.

Mr. O'Connor. I may say to the gentleman that he can write back to these patriotic citizens of Kansas City and say to them that they are being deluded if they think Congress will adjourn without entirely taking care of the situation which confronts us today.

Mr. Wood. I am glad to have the gentleman make that statement. I did not intend to inject the Supreme Court into this discussion, but the gentleman from Georgia by his interrogations compelled me to refer to them.

Mr. Speaker, certain insinuations have been made by the gentleman from Georgia [Mr. Cox] that I in some way maligned the character of the members of the Supreme Court and inferred that I did not have the proper regard for them. I just want to say that I am not a constitutional lawyer, in fact, not a lawyer at all, but in the Wright case in 1885 which involved a labor controversy, the coal company was not an interstate institution. The United States Supreme Court then decided in view of the fact that the coal produced by the coal company was intended for interstate commerce the coal company was engaged in interstate commerce and an injunction was issued against labor. Then there is the Long Island Railroad Co. case.

[8817] Mr. Cox. Has the Supreme Court at any time in its history held that production of a commodity was interstate commerce?

Mr. Wood. Yes; they held to that effect in the case just mentioned. They held to the same effect in the Long Island Railroad Co. case, which was an intrastate carrier. They held there that the road was transferring goods to carriers in interstate commerce, although it was an intrastate institution. There is a great deal to be said pro and con with reference to the decisions of the Supreme Court, and I think we as a free people have the right to express our own opinion when the Supreme Court hands down a decision. I hope we will never come to the day that existed in Russia prior to the revolution over there when men did not dare to even question the "Little Father," the Czar.

Mr. Marcantonio. Will the gentleman yield?

Mr. Wood. I yield to the gentleman from New York.

Mr. Marcantonio. Also in line with the decision which the gentleman has just cited, I also wish to remind him of the decision in the Danbury Hat Co. case.

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Mr. WOOD. Yes. That is a very outstanding case, in which the president, secretary, and treasurer of the American Federation of Labor were held in contempt.

Mr. PIERCE. Will the gentleman yield?

Mr. WOOD. I yield to the gentleman from Oregon.

Mr. PIERCE. The gentleman might also cite Abraham Lincoln in speaking of the Supreme Court with reference to the celebrated Dred Scott decision.

Mr. WOOD. Yes.

Mr. BLANTON. Will the gentleman yield?

Mr. WOOD. I yield to the gentleman from Texas.

Mr. BLANTON. I agree with the gentleman from Missouri [Mr. Wood] when he speaks about Russia of long ago, but I am sure that the gentleman also would not like to see this country come to a condition similar to that which exists in Russia today?

Mr. WOOD. Of course, the gentleman's question is entirely beside the point we are discussing. He knows I would not.

Mr. BLANTON. I think conditions there today are worse than they ever have been.

Mr. WOOD. That is a very leading question, and the gentleman ought not to ask a Member of Congress that kind of a question. We certainly do not want to revert to sovietism or to Mussolini or to Hitler.

Mr. Speaker, I want to read a telegram which just came from Muskogee, Okla., addressed to Mr. Duncan, who is an official of the Central Labor Union down there. He is at the present time in Washington.

This is addressed to Mr. Duncan and reads as follows:

> Iron workers locked out this morning by company. All men discharged then offered reemployment under open-shop conditions. Only few accepted. Pitts has not arrived yet, may come later tonight. Advised establishment of pickets tomorrow which will be done unless Pitts arrives and rescinds.

Now, what happened in connection with the Oklahoma Iron Works? On the day that the Supreme Court handed down the decision the managers of the Oklahoma Iron Works were in conference with a committee representing the employees of the iron works. They were trying to work out an agreement by collective bargaining. When word came over the wire about the Supreme Court decision the managers threw up their hands and said, "We are through." The next morning a notice was posted in the plant stating that all overtime work hereafter would be paid on the regular time basis. A few days later the members of the committee who were negotiating the contract with the company lost their jobs on account of their activity in the organization. The members were given that as the reason.

That is the result of the decision of the Supreme Court. My purpose in placing these communications in the Record is to not necessarily just warn you, because you know probably as well as I do what is going to happen when this Congress adjourns, but to furnish some information as to how the tendencies are running.

Mr. COX. May I ask the gentleman what is going to happen?

Mr. WOOD. I may say to the gentleman it is my opinion, and I think it is the opinion of every other Member of the Congress, that if we do not enact legislation that will in some way again give the

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employees and employers an opportunity to sit around the table and deal through collective bargaining or if we do not create some machinery that will enable them by their own activity to lower the hours of labor and keep pace with the cost of living, the unfair employers are certainly going to take advantage of the situation.

I may say further that if something is not done by this Congress to prevent unscrupulous employers from taking advantage of the bars being thrown down, the $4,000,000,000 that we have appropriated to be spent on Public Works projects will not create the spread of employment as intended, because the hours of labor will be constantly on the increase in private industry.

Mr. O'CONNOR. Mr. Speaker, will the gentleman yield?

Mr. WOOD. I yield.

Mr. O'CONNOR. Of course, the gentleman has read in the papers that one of the projected measures is to meet that situation?

Mr. WOOD. Yes.

Mr. O'CONNOR. So that on Government projects the wages and hours will be prescribed.

Mr. WOOD. Oh, yes; on Government projects, and I am pleased that the President has so ruled; but I think it is necessary also to have the Wagner bill enacted into law so that men may be free to join organizations of their own choosing.

Mr. SCHNEIDER. Mr. Speaker, will the gentleman yield?

Mr. WOOD. I yield.

Mr. SCHNEIDER. It is true, however, that the reduction in wages and the increase in hours and the doing away with the employment of a certain number of employees will more than offset in purchasing power the $4,000,000,000 that we have just appropriated for the purpose of creating purchasing power by putting people to work.

Mr. WOOD. I am pleased the gentleman has mentioned that. There is no question in my mind about it whatever, and we may just as well realize the fact that we are living in a machine age and every day we live there is some device invented that increases the productivity of man, and we must handle the situation. If we do not regulate the machine the machine is going to destroy us. It is not a question of whether a man wants to work 6 or 7 or 8 or 9 hours a day; they cannot work 8 or 9 hours a day if we want the work to be spread. There is not enough work to go around, because now they can produce too much. They produce more now in a day than they did 20 years ago in a week, and in many lines of industry they produce more now in a day than they produced before in a month, and I see now that a cotton-picking machine has been perfected and they say this machine in a day will pick as much cotton as one picker can pick in 10 weeks. This is just an example of how fast we are progressing, and we must do something to meet this situation.

Therefore, I hope, and I believe this Congress is going to pass the Wagner bill and other similar legislation that will enable us to keep down to a minimum the hours of labor so that we may bring about a proper spread of employment and maintain balanced production and distribution.

Mr. CRAWFORD. Mr. Speaker, will the gentleman yield?

Mr. WOOD. I yield.

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Mr. CRAWFORD. I would like to ask the gentleman what would be the practical effect, if he were operating a plant manufacturing steel machinery or heavy machinery of some kind and he desired to make a contract with the Government, with the thought of having the men who worked on that particular part of his manufacturing turn out work on code wages, while those who were working in the other part of his business, which amounted to 80 or 90 percent of the work, were working on different wages and hours. What would be the situation with reference to bidding on a con-[8818]tract of that kind? Is it not a fact that the gentleman would refuse to bid on such a contract rather than disturb the entire operations of his plant?

Mr. WOOD. In the first place, if I were a manufacturer and I felt about it as I do now, I would pay all laborers who were performing a certain function the same wages, and whether it is in the steel industry or any other industry, if they are not paying them the same wages, they ought not to get a contract from the Government, and I do not think they will. [Applause.]

[Here the gavel fell.]

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Union Calendar No. 400

74TH CONGRESS
1ST SESSION

S. 1958

(Report No. 1147)

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1935

Referred to the Committee on Labor

MAY 21, 1935

Reported with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed

JUNE 5, 1935

Recommitted to the Committee on Labor and ordered to be printed

JUNE 10, 1935

Reported with additional amendments, committed to the Committee on the Whole House on the state of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

AN ACT

To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND ~~DECLARATION~~ ~~OF~~ POLICY

~~Section 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of owner-~~

~~ship and out of numerous other modern industrial conditions, impairs and affects commerce by creating variations and instability in wage rates and working conditions within and between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity~~

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~~between production and consumption, reducing the amount of commerce, and tending to produce and aggravate recurrent business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.~~

~~The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial unrest which burden and affect commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife.~~

~~It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-~~

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~~organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.~~

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing interstate and foreign commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of interstate and foreign commerce, and tends to aggravate recurrent business de-

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pressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

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Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of interstate and foreign commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of interstate and foreign commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

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DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

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(4) The term "representatives" includes any individual or labor organization.

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(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, ~~or commerce, or any transportation or communication relating thereto,~~ *commerce, transportation, or communication* among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

~~(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.~~

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(7) *The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.*

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created ~~as an independent agency in the executive branch of the Govern-~~

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~~ment~~ *in the Department of Labor* a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. *Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.*

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees

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and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the

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old Board shall cease to exist~~; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing~~. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended~~, without acquiring by such transfer a permanent or civil-service status~~. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

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SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

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SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

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(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., *Supp. VII*, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

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(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective barganing by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

~~(b) The Board shall decide in each case whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.~~

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(b) *The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.*

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may

investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing *upon due notice*, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any

other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency con-

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ducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to ~~appear~~ *intervene* in the said proceeding *and* to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed

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with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) ~~If such person fails or neglects to obey such order of the Board while the same is in effect, the~~

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~~Board may~~ *The Board shall have power to* petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement

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of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and ~~shall~~ *to* make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, *and enforcing as so modified*, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or

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neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

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(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been

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engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, ~~and shall in like manner to make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order~~ *and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order* of the Board; and the findings

of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, *and enforcing as so modified* or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" ~~U. S. C.,~~ *approved March 23, 1932* (*U. S. C., Supp. VII*, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evi-

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dence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine withesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdic-

tion to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting

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forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., *Supp. VII*, title 15, sec. 707 (a)), as amended from time to time, or of section 77 ~~(b)~~ *B*, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

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SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than

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those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Amend the title so as to read: "An Act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes."

Passed the Senate May 13 (calendar day, May 16), 1935.

Attest: EDWIN A. HALSEY,
Secretary.

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74TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 1147

NATIONAL LABOR RELATIONS BOARD

June 10, 1935.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. CONNERY, from the Committee on Labor, submitted the following

[1] REPORT

[To accompany S. 1958]

The Committee on Labor, to whom was referred the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, having had the same under consideration, report it back to the House with amendments and recommend that the bill, as amended, do pass.

The committee amendments are as follows:

On page 1, line 3, strike out "declaration of".

On page 1, line 4, strike out all beginning with "The" down through line 24 on page 2 and insert in lieu thereof the following:

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing interstate and foreign commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of interstate and foreign commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment or interruption, and promotes the flow of interstate and foreign commerce by

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removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

[2] It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of interstate and foreign commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

On page 4, lines 10, 11, and 12, strike out "or commerce, or any transportation or communication relating thereto", and insert in lieu thereof "commerce, transportation, or communication".

On page 4, strike out lines 19 to 23, both inclusive, and insert in lieu thereof the following:

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

On page 5, lines 17 and 18, strike out "as an independent agency in the executive branch of the Government" and insert in lieu thereof "in the Department of Labor".

On page 6, line 5, after the period insert the following:

Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

On page 7, line 15, strike out all after "exist" down through "hearing" in line 23.

On page 8, strike out and insert in lieu thereof the following: "amended. All records, papers, and property".

On page 9, line 25, insert after "U. S. C.," the following: "Supp. VII,".

On page 11, strike out lines 3 to 6, both inclusive, and insert in lieu thereof:

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

On page 11, line 12, after the word "hearing" insert "upon due notice".

On page 13, line 3, strike out "appear" and insert "intervene".

On page 13, line 4, after "proceeding" insert "and".

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On page 14, line 8, strike out "If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may", and insert in lieu thereof "The Board shall have power to".

On page 15, line 2, strike out the word "shall" and insert in lieu thereof the word "to".

On page 15, line 4, after "modifying," insert "and enforcing as so modified".

On page 17, strike out lines 2 and 3 and insert in lieu thereof the following: "and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part of the order".

On page 17, line 12, after the word "modifying", insert "and enforcing as so modified".

On page 17, line 17, strike out "(U. S. C.," and insert in lieu thereof "approved March 23, 1932 (U. S. C., Supp. VII,".

[3] On page 21, line 7, insert after "U. S. C.," the following: "Supp. VII,".

On page 21, line 8, strike out "(b)" and insert in lieu thereof "B".

A bill (H. R. 6288) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, was referred to the Committee on Labor and was made the subject of extended hearings. H. R. 7978, a somewhat amended version of the original bill, conforms to the considered views of the committee after consideration of H. R. 6288, and was favorably reported.

The provisions and objects of this bill have been subjected to preposterous exaggerations and misrepresentation. Various associations of employers have expressed unwonted solicitude for the rights of employees, which they profess to believe are jeopardized by the bill. But the bill is merely an amplification and further clarification of the principles enacted into law by the Railway Labor Act and by section 7 (a) of the National Industrial Recovery Act, with the addition of enforcement machinery of familiar pattern. Curiously, few opponents of the bill have had the hardihood to avow an opposition to the principles of section 7 (a); they take alarm, however, when a serious effort is proposed to enforce the mandate of that law.

Upon the passage of the National Industrial Recovery Act it was hailed by the President as giving to workers "a new charter of rights long sought and hitherto denied." Section 7 (a) provided:

> Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference,

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restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

No special agency was provided by law with power to administer and enforce section 7 (a). Pursuant to his general authority in section 2 (a) of the National Industrial Recovery Act, the President created the National Labor Board, under the chairmanship of Senator Wagner, with power "to settle by mediation, conciliation, or arbitration all controversies between employers and employees which tend to impede the purposes of the National Industrial Recovery Act" (Executive Order No. 6511, Dec. 16, 1933); and to conduct elections among the employees for designation of representatives (Executive Orders No. 6580, Feb. 1, 1934, and No. 6612–A, Feb. 23, 1934).

All that the National Labor Board could do, if it found a violation of section 7 (a), was to report the case to the National Recovery Administration, which might take away the employer's "blue eagle," or to the Department of Justice, which was authorized to institute, de novo, proceedings in equity, or a criminal prosecution, under subsection (c) and (f) of section 3. The provision of section 3 (b), that violations of the codes (including the labor provisions of section 7 (a) embodied therein) shall be deemed unfair methods of competition [4] within the meaning of the Federal Trade Commission Act, has in practice become a dead letter, probably because the Federal Trade Commission in justice to its other functions could not have undertaken the general enforcement of the codes.

In the first flush of national fervor that greeted the inauguration of the National Industrial Recovery Act, the National Labor Board was able, by moral rather than the legal authority, to accomplish a good deal in the interpretation and application of the section. But resistance to the law gradually stiffened, as reactionary employers got their second wind, and as the National Labor Board, by a series of fair interpretations of section 7 (a), made it clear that it was illegal for an employer to discharge or discriminate in any way against an employee because of his union affiliation or activities; that an employer must not interfere with the self-organization of employees by foisting upon them a plant organization or a "company union" which the employer might think best for them; that an employer must deal with the chosen representative of his employees, even though such representative may be an "outside" union; that the representative chosen by the majority of the employees in an appro-

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priate unit is entitled to speak for all the employees in that unit in collective bargaining negotiations with the employer.

After several months of experience as chairman of the National Labor Board, Senator Wagner reported to the Congress last year that section 7 (a) could not be enforced unless a statutory board especially charged with its administration were given powers analogous to those of the Federal Trade Commission in preventing unfair trade practices. The so-called "Wagner bill," providing for such a board, was the subject of lengthy hearings by the Committee on Education and Labor of the Senate, but failed of passage in the pressure for adjournment. Congress did, however, make a gesture toward better enforcement by the passage of Public Resolution 44, Seventy-third Congress, which gave the President express statutory authority to establish a board or boards "authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7 (a) of said act or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce."

But, apart from somewhat improved machinery for the conduct of elections, such boards established under the public resolution have all the weaknesses of the old National Labor Board in the matter of preventing and restraining violations of section 7 (a). An interesting contemporaneous commentary upon Public Resolution 44 recently found its way into the record of the Senate Munitions Investigating Committee. It is a letter written by the vice president of a large industrial corporation on the day the public resolution passed, which letter read in part as follows:

> My guess is Congress will today pass the joint resolution proposed as an alternate to the Wagner bill, and that will end or the time being at least, many of our troubles in that respect.
>
> Personally, I view the passage of the joint resolution with equanimity. It means that temporary measures which cannot last more than a year will be substituted for the permanent legislation proposed in the original Wagner bill. I do not believe that there will ever be given as good a chance for the passage of the Wagner Act as exists now, and the trade is a mighty good compromise.
>
> I have read carefully the joint resolution, and my personal opinion is that it is not going to bother us very much. For one thing, it would be necessary, if the [5] newly formulated boards are to order supervised elections in our plants, that they first set aside as invalid the elections just completed. I do not think this can be done.
>
> If in 1935 our elections should occur in the second half of June rather than the first half, the Board would automatically be legislated out of existence before that date. If they try to horn in on us in any situation in the meantime, I think we have our fences pretty securely set up.
>
> Therefore, and for other reasons, I am in favor of compromising by not opposing the passage of the joint resolution. This, of course, is my personal opinion. I have not yet had a chance to clear it with our people here.

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This prophesy that the public resolution "is not going to bother us very much" has to a large extent been verified by the experience of the past year. On June 29, 1934, pursuant to the public resolution, the President by Executive order created the National Labor Relations Board. This Board consisted originally of Lloyd K. Garrison, dean of the University of Wisconsin Law School, chairman; Harry A. Millis, chairman of the department of economics at the University of Chicago; and Edwin S. Smith, formerly Massachusetts commissioner of labor and industries. In October 1934 Mr. Garrison was succeeded as chairman by Francis Biddle, Esq., of Philadelphia. The National Labor Relations Board, following the lead of its predecessor, the National Labor Board, has enriched the body of labor law by a notable series of decisions interpreting and applying section 7 (a). Its decisions and those of its regional boards have received some measure of compliance by the acquiescence of employers involved; but in the crucial cases of recalcitrant employers the Board has been up against a stone wall of legal obstacle.

This has been true both in cases where the Board found violation of section 7 (a) and in cases where it ordered elections, as Chairman Biddle frankly testified in the hearings before this committee. A brief recitation of the course of proceedings in both types of cases will make clear why this has been so.

When complaint is made to the Board of a violation of section 7 (a), the evidence is heard and transcribed by the proper regional board established by the National Labor Relations Board. The board has no power to subpena witnesses or administer oaths. If the employer chooses to ignore the hearing, he can do so with impunity except that his "blue eagle" may be put in jeopardy by the subsequent action of the National Recovery Administration. If the regional board finds a violation of section 7 (a), and the employer fails to comply with its recommendation for appropriate restitution, the case is referred to the National Labor Relations Board, which reviews the record, usually upon hearing in Washington. If the National Labor Relations Board confirms the finding of violation it publishes its findings of fact and announces that unless the employer in default makes proper restitution, it will refer the case to the Compliance Division of the National Recovery Administration, and to other agencies of the Government.

At this point there is no legal compulsion upon the employer to comply with the Board's decision. Suppose he refuses to comply. The Board then transmits the case to the National Recovery Administration, which, though it is bound by the President's Executive order to accept the Board's findings of fact as final, nevertheless has a discretion whether to deprive the employer of the N. R. A. insignia

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as recommended by the Board. Assuming that the National Recovery Administration decided to remove the "blue eagle," compliance is by [6] no means assured. The nature of the business may be such that the deprivation of the "blue eagle" has only a negligible effect, in which case the employer may still ignore the decision. If, however, the possession of the N. R. A. insignia is of substantial value to the particular employer, he may apply to the Supreme Court of the District of Columbia for an injunction to restrain the National Recovery Administration from acting to deprive him of the right to display such insignia. These injunction suits are becoming almost a routine procedure. To date, none of them has gone to hearing on the merits. Of course, the National Labor Relations Board does not control this litigation.

When the Board refers a case to the Department of Justice, the most glaring defect in the present procedure is that the record made up by the Board goes for naught, and weeks or more after the alleged violation the Department must prepare the case for court, de novo. The Department does not go into court on the record before the Board to enforce the decision of the Board; indeed the Board's findings of fact have not even prima facie weight in the subsequent proceedings. Furthermore, due to the lack of power in the Board to subpena witnesses and documents, the Department in many cases finds it necessary to make extensive investigations before instituting legal proceedings. The stark fact is that after 2 years of section 7 (a) the Government has succeeded in getting in the courts only 4 cases for enforcement, 2 being proceedings in equity and 2 criminal proceedings; and only 1 of these cases (the *Weirton* case) has come to trial. While in the public mind the National Labor Relations Board is probably regarded as responsible for the enforcement of section 7 (a), the complete control of litigation is vested in the Department of Justice and its various United States attorneys throughout the country.

Public Resolution 44 has not proved much more satisfactory even in its provisions which had some virtue over the preexisting law, namely, the provisions for elections. By section 2 of the resolution the Board is empowered, when it shall appear in the public interest to order and conduct elections by secret ballot of any of the employees of any employer, to determine by what person, persons, or organization they desire to be represented. For the purposes of such elections the Board is authorized to order the production of documents and the appearance of witnesses to give testimony under oath. Any order issued by the Board under the authority of this section may be enforced or reviewed, as the case may be, by petition in the

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appropriate circuit court of appeals, following the procedure of the Federal Trade Commission Act.

The weakness of this procedure is that under the provision for review of election orders employers have a means of holding up the election for months by an application to the circuit court of appeals. Thus, in the *Firestone* and *Goodrich* cases, where the Board ordered elections in November 1934, the cases were not argued in the circuit court of appeals until April; decisions have not yet been rendered and if the decisions happen to be favorable to the Board, the companies will undoubtedly appeal to the Supreme Court, with further inevitable delay. At the present time, 10 cases for review of the Board's election orders are pending in the circuit courts of appeals. Only three have been argued and none have been decided.

[7] The election is but a preliminary determination of fact, and there is no reason why employers should have an opportunity for court review prior to the holding of the election. The ability of employers to block elections has been productive of a large measure of industrial strife. When an employee organization has built up its membership to a point where it is entitled to be recognized as the representative of the employees for collective bargaining, and the employer refuses to accord such recognition, the union, unless an election can promptly be held to determine the choice of representation, runs the risk of impairment of strength by attrition and delay while the case is dragging on through the courts, or else is forced to call a strike to achieve recognition by its own economic power. Such strikes have been called when election orders of the National Labor Relations Board have been held up by court review.

In the *Firestone* and *Goodrich* cases, strikes were imminently threatened, and were only averted at the last minute by appeals to the men to await the decisions of the court on the election orders. The companies in these cases had made every preparation to wage a war with striking employees, rather than to submit to the orderly democratic process of a govermentally supervised election to determine by whom the employees desired to be represented in collective bargaining negotiations.

The result of all this nonenforcement of section 7 (a) has been to breed a widespread and growing bitterness on the part of workers, who feel, with much justification, that they have been given fair words, but betrayed by the Government in the execution of its promises. Time after time employees who have sought to organize in pathetic reliance upon section 7(a) have found themselves discriminated against by the employer, and appeals to the Government for redress have been in vain. If such a situation is allowed to continue uncorrected, it will become a menance to industrial peace that cannot be exaggerated.

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The time for appropriate action by the Congress is at hand, because on June 16, 1935, the National Industrial Recovery Act, and Public Resolution 44, Seventy-third Congress, expire by limitation. The Congress does not propose to withdraw the "new charter of rights" enacted in section 7 (a). The only honest thing for the Congress to do, therefore, is to provide adequate machinery for its enforcement which is the object of the present bill.

Before proceeding to detailed comment on the bill, it may be helpful to state in broad outline the structure of the bill. Section 7 (a), as it now appears in the National Industrial Recovery Act, is amplified by the specific prohibition of certain unfair-labor practices, which by fair interpretation would constitute infringements upon the substantive rights of employees declared in section 7 (a). These prohibitions, and the substantive rights, are made applicable, to the extent of Congress' power under the commerce clause, to employers and employees irrespective of whether the industry in question is subject to a code of fair competition. The bill, therefore, rests upon a basis entirely independent of the National Recovery Administration, and should be considered on its merits quite apart from the ultimate disposition of the legislation affecting the National Recovery Administration. As a means of enforcing the provisions of the bill, there is created a permanent Board, with appropriate powers to make [8] investigations of alleged violations of the law, to make orders, and apply directly to the proper circuit court of appeals for enforcement of such orders, in the general manner provided for the enforcement of the orders of the Federal Trade Commission.

A detailed analysis of the bill follows:

FINDINGS AND DECLARATION OF POLICY

Section 1 states the underlying factual basis for the regulation provided in the bill. The committee wishes to emphasize particularly the objective of the bill to remove certain important sources of industrial unrest engendered, first, by the denial of the right of employees to organize and by the refusal of employers to accept the procedure of collective bargaining, and second, by failure to adjust wages, hours, and working conditions traceable to the absence of processes fundamental to the friendly adjustment of such disputes. Such unrest, as a matter of common knowledge and in judicial experience, leads to strikes and other forms of economic pressure which obstruct and burden the free flow of interstate and foreign commerce. In brief, such obstructions and burdens occur because of the stoppage of the flow of goods from and into the channels of such commerce, because of the effect on related or dependent industries or establishments, and

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because of the cessation of employment and wages, sometimes prostrating whole communities or otherwise impairing such commerce. By protecting the right of employees to organize and bargain collectively, and as a direct result by promoting just and appropriate practices for friendly adjustment, the bill eliminates many of the most important causes of unrest and strife, and so fosters, protects, and promotes the free flow of commerce, increases the amount thereof and removes obstacles and obstructions thereto.

The loss in wages, trade, and commerce from such strife has been enormous, as competent investigation demonstrates. Cf. Daugherty, Labor Problems in American Industry (1933), pp. 356, 358, 360; Douglas, An Analysis of Strike Statistics, Journal of American Statistical Association (September 1923), pp. 866–877; Monthly Labor Review, June 1932, pp. 1353–1362; W. I. King, The National Income and Its Purchasing Power (National Bureau of Economic Research, 1930), p. 56; United States Commissioner of Labor, Twenty-first Annual Report: Strikes and Lockouts (1906); Strikes and Lockouts in the United States, 1916–32; Monthly Labor Review, June 1933, pp. 1295–1304; Monthly Labor Review, July 1934, pp. 68–82; Monthly Labor Review, March 1935, pp. 677 ff.; United States Coal Commission, Labor Relations in the Bituminous Coal Industry (1923); National Association of Manufacturers, Convention Proceedings, 1926, p. 136; Hammond and Jenks, Great American Issues (1921), p. 99; N. Olds, The High Cost of Strikes (1921), p. 210; Fitch, Causes of Industrial Unrest (1924); Commons and Andrews, Principles of Labor Legislation (1920), p. 125; Congressional Record, vol. 78, pt. IV, p. 3443; Report on the Steel Strike of 1919; Commission of Inquiry for the Interchurch World Movement (1920); Report of the Anthracite Coal Strike Commission, United States Bureau of Labor, Bulletin No. 46 (1903); Labor Relations in the Bituminous Coal Industry, United States Coal Commission (1923); Report of the Board of Inquiry for the Cotton Textile Industry (1934) (appointed by President Roosevelt under Public Resolution No. 44).

[9] Particularly has the attempt in section 7 (*a*) of the National Industrial Recovery Act to confer upon employees their charter of rights met with stubborn resistance by certain groups of employers. The absence of effective enforcement and election machinery, and the diffusion of responsibility and conflicting interpretations in regard to section (7) (a), have forced workers to resort to industrial warfare to gain the rights which by law were justly theirs. Throughout the period of the operation of the National Industrial Recovery Act, there existed or were impending serious conflicts burdening or threatening to burden the free flow of commerce in some of our largest in-

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dustries, such as coal and copper mining, textile manufacturing, steel, automobiles, rubber, and shipping. These conflicts have had their counterpart in other industries as well, on perhaps a smaller scale, but equally bitter and fraught with dangerous possibilities.

The bill seeks, to borrow a phrase of the United States Supreme Court, "to make the appropriate collective action (of employees) an instrument of peace rather than of strife" (*Texas & New Orleans R. R. Co.* v. *Brotherhood* (281 U. S. 548)). The efficacy of such regulation is amply demonstrated by the history of labor relations on the railroads of the country and by the experience of the National War Labor Board during the Great War. Chairman William M. Leiserson, of the National Mediation Board, has made some interesting observations upon the results that follow when the recognition of labor organizations ceases to be a fighting issue and the processes of collective bargaining become the habitual course of dealing. He said:

> I think this is important to note, that so long as the employers qestion the right of the employees to hire personnel managers, a right that they have themselves, or sales agents, whichever you want to call them, then the employees have to fight for their rights. And a mild, gentlemanly sort does not get very far, and the type that survives is a more blustering, fighting kind of a representative of labor. And that is the type of people, the fighting kind, that survived in the railroad business, 20 years ago, when they had to fight for their right to do business on a cooperative basis.
>
> As soon as the railroads began to say, "Sure you have a right to represent the employees; let us sit down and make a contract or an agreement", and there are thousands of these agrements on the railroads, and from that time on the type of labor leader, or personnel manager for the labor people was a more business-like type, and he is a good deal like the fellow on the employer's side.

The committee amendment to this section reformulates the declaration of policy in order to emphasize the intent of the bill to promote industrial peace, and therefore to bring it more clearly outside of the ruling in the *Schechter* case. It is believed that the cases which have sustained Federal intervention in labor disputes under the antitrust laws are broad enough to sustain this bill, which is designed to give labor Federal protection in those same areas which previously were subjected to Federal restraint.

DEFINITIONS

In section 2 are listed various definitions of terms. These definitions are for the most part self-explanatory. The committee wishes to emphasize the need for the recognition as expressed in subsections 3 and 9, that disputes may arise regardless of whether the disputants stand in the proximate relation of employer and employee, and that self-organization of employees may extend beyond a single plant or employer. This is so plain as to require no great elaboration. We

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may point simply to the words of Chief Justic Taft in the case of [10] *American Steel Foundries* v. *Tri-City Central Trades Council* (257 U. S. 184, at 209):

> They (labor unions) were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court. The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild.

This statement is a sufficient answer to those who, with questionable disinterestedness, proclaim that rugged individualism is the great boon of the American workman; or that there is something "un-American" in a movement by workers to pool their economic strength in a type of labor organization most effective in approximating the economic power of their employers, namely, in so-called "outside unions," thereby establishing that "equality of position between the parties in which liberty of contract begins." While the bill does not require organization along such lines, and indeed makes no distinction between such organizations and others limited by the free choice of the workers to the boundaries of a particular plant or employer, it is imperative that employees be permitted so to organize, and that unfair labor practices taking in workers and labor organizations beyond the scope of a single plant be regarded as within the purview of the bill.

The definitions in subsections 6 and 7 are intended as the basic jurisdictional definitions, as used in their appropriate setting in sections 9 and 10. The bill is based squarely on the power of Congress to regulate commerce among the several States and with foreign nations. It does not apply to controversies or practices of purely local significance which do not presently or potentially burden or obstruct the free flow of such commerce.

The committee amendment to subsection 6 narrows the definition of interstate commerce by not making it extend to transportation or

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communication that is merely "related to" interstate commerce. This change has been made in view of the doubts that the *Schechter* case casts upon the validity of regulating practices that are merely "related to" or "indirectly" interstate commerce.

The new definition inserted by the committee amendment to subsection 7 also helps to confine the bill to the proper sphere under the Schechter decision by removing from its purview practices which merely "affect" interstate commerce. Under this amendment the bill is confined to practices "burdening or obstructing" interstate commerce. These words have received repeated recognition in court decisions as fit bases for Federal jurisdiction.

[11] NATIONAL LABOR RELATIONS BOARD

Section 3. This section establishes a nonpartisan board of three members appointed by the President by and with the advice and consent of the Senate. The committee has departed from S. 1958, as it passed the Senate, by providing that the Board shall be "created in the Department of Labor" instead of being established "as an independent agency in the executive branch of the Government."

The committee does not intend, by this change, to subject the Board to the jurisdiction of the Secretary of Labor in respect of its decisions, policies, budget, or personnel. An amendment offered by the Secretary of Labor, requiring that the Board's appointments of employees shall be subject to the approval of the Secretary, was not accepted by the committee. We recognize the necessity of establishing a board with independence and dignity, in order that men of high caliber may be persuaded to serve upon it, and in order to give it a national prestige adequate to the important functions conferred upon it. While it is convenient to locate the Board in the Department which deals with labor problems, this nominal connection will not impair the independence of the Board, which will be free to administer the statute without accountability except to Congress and the courts.

For the information of the House, we insert letters from the Secretary of Labor and the Chairman of the National Labor Relations Board, expressing their respective views on this point:

LABOR DEPARTMENT,
Washington, May 13, 1935.

Hon. WILLIAM P. CONNERY, Jr.,
House of Representatives, Washington, D. C.

MY DEAR MR. CONGRESSMAN: I have your letter of May 10 enclosing a copy of H. R. 7978, your bill "to promote equality of bargaining power between employers and employees, to diminish the cause of labor disputes, to create a National Labor Relations Board, and for other purposes." As you know, I am deeply interested

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in the success of this legislation, and, therefore, was very pleased to learn that the House Committee on Labor had voted to report the bill favorably.

The bill which your committee has approved embodies the principles of the measure introduced by you earlier in the session, the principal objectives of which I commended in my testimony before your committee. Briefly summed up, it proposes to write into the statute law of the United States the legal right of collective bargaining to clarify that right by precise definition, and to provide machinery for its enforcement by creating a new National Labor Relations Board, vested with quasi-judicial powers.

I am very grateful to your committee for the careful consideration which it accorded to my testimony when I appeared before it, and I note that several of the suggestions I made at that time have been incorporated in the present text of the bill. One of the most important of these changes has been the revision of section 3 (a), so that in its present form it makes the National Labor Relations Board a part of the Department of Labor. Although I believe that the judicial independence of the Board should be insured, by making its decisions subject to review only in the courts, I think it would have been unwise to have recommended a bill creating the Board as an entirely separate agency, dissociated from all the permanent executive departments.

Your bill recognizes the importance of constant integration of the problems of collective bargaining with other labor problems, which is essential if the Department and the Board are to have the greatest possible understanding of the ramifications of their decisions in the field of industrial relations. Despite any restrictions which legislation might define, there would always be pressure upon a labor board to engage in conciliation and research. If the Board was separate this would mean an unnecessary duplication of functions already performed by the Department of Labor. Moreover, your bill, by providing for a unified administrative structure, guards against the confusion produced in the public mind [12] by an increase in governmental agencies, and brings the Board more closely within the sphere of the problems of Government which ordinarily come to the attention of the President and Cabinet.

Moreover, it seems to me that your bill tends to make the proposed Board more judicial in character than would be possible were it an independent agency whose attention would be subject to distraction from specific cases by the temptation to strengthen its prestige through educational and administrative activities. A court is free from such temptation because the groove of its activity is so well defined that it can ignore all propaganda in an administration and devote its entire time to the quiet, unimpassioned performance of the judicial processes. Anyone interested in making the proposed labor board as much as possible like a court should favor provisions restricting the scope of its activities to actual cases rather than to encourage it to enter the disconcerting tasks of administration. I am not sure that your bill goes as far as it might in relieving the Board of administrative responsibilities, for it charges the Board with the duty of making all the appointments to its own staff without the advice and consent of the head of the Department (sec. 4 (a)), and the task of reporting directly each year to the President and Congress (sec. 3 (c)). It would seem to me that these duties are possibly administrative in character and might consistently be given to the Secretary of Labor.

The other changes which your committee has made in the original draft also impress me favorably, particularly the omission of the section giving Federal district courts jurisdiction of unfair labor practices. I am glad that you concur with me in thinking that this section would have been productive of a welter of

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conflicting decisions, and that greater promise of uniform interpretation of the law will result from confining original jurisdiction to the Board or its subordinate agencies. I also feel that section 10 (c), defining the Board's procedure, considerably clarifies the phraseology of the original section. The redrafting of section 9 (a) dealing with the troublesome question of majority rule and the rights of minority groups also strengthens the bill by preventing any questions of minority representation being raised. The original wording was not altogether clear on this point.

Sincerely yours,

FRANCES PERKINS.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., May 17, 1935.

Hon. WILLIAM P. CONNERY, Jr.,
House Office Building, Washington, D. C.

MY DEAR MR. CONGRESSMAN: In answer to your favor of the 10th, enclosing a copy of H. R. 7978, National Labor Relations bill, I note that this bill is identical with Senator Wagner's bill as it came out of the Senate Committee on Education and Labor, with the exception of section 3 (a) of the House bill. The language in the Senate bill is: "There is hereby created as an independent agency in the executive branch of the Government." The language of the House bill reads: "There is hereby created in the Department of Labor." Otherwise the two bills are identical.

We are of opinion that the amendment proposed by your committee is distinctly harmful to the general purposes of the bill. It may be a matter of doubt what are the implications of the unexplained phrase "created in the Department of Labor." Were it not for the fact that your committee declined to accept one of the amendments proposed by the Secretary of Labor specifically subjecting to the approval of the Secretary the Board's appointment of employees, it might have been assumed that putting the Board "in the Department of Labor" carried with it automatic control by the Secretary over personnel. The phrase "created in the Department of Labor" might also carry the implication of budgetary control, which inevitably, though indirectly, enables the Secretary to influence the policy of the Board. Believing as we do that the independence of the Board should be established upon an unquestionable basis, we favor the unequivocal Senate version creating the Board "as an independent agency in the executive branch of the Government."

The value and success of any quasi-judicial board dealing with labor relations lies first and foremost in its independence and impartiality. After all, although the bill deals with the rights of labor, for the success of the machinery contemplated by the act it must in the long run have the confidence of industry and of the public at large. In our view it is in derogation of such independence and [13] such impartiality to attach the Board to any department in the executive branch of the Government, and particularly to a department whose function in fact and in the public view is to look after the interests of labor.

The Board is to administer an act of Congress laying down a specific policy. If the Board is subject to the control of the Secretary of Labor as to personnel and budget, there will be an inevitable tendency to conform the administrative policies of the Board to the policies of the particular administration in power.

Where Congress has defined a policy and created an administrative board to carry out that policy, it has with marked consistency recognized that the board so created should be appointed for comparatively long terms of office and be

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free of control by the executive departments or by any particular administration. The arguments advanced for putting the Board in the Department of Labor would, if accepted by the Congress, have resulted in putting the Interstate Commerce Commission, the Federal Trade Commission, the Communications Commission in the Department of Commerce, and the Reconstruction Finance Corporation in the Treasury Department, instead of their being given an independent status. A similar observation may be made with reference to the Securities Exchange Commission and the National Mediation Board. It is of profound significance that the four outstanding permanent administrative agencies created by the last Congress to effectuate declared congressional policies were established as independent agencies; these are the Securities Exchange Commission, the Communications Commission, the Federal Housing Administration, and the National Mediation Board. Considering the specific quasi-judicial functions of the proposed National Labor Relations Board, there are even stronger reasons why it should have the prestige of independent status, than there were for establishing the National Mediation Board, to quote the words of its organic act, "as an independent agency in the executive branch of the Government."

It may be further observed that the multiplication of the functions of Cabinet officers has already proceeded to such a point that the practical supervision of any further agencies set up by the Congress, if entrusted to the departments, would necessarily be exercised by subordinates, themselves often overworked, and often not intimately acquainted with the special problems.

We wish to emphasize the essential difference between mediation and conciliation in adjusting disputes over wage and hour demands, and the work of the National Labor Relations Board in handling 7 (a) cases under the present law, or the work of the proposed new Board in handling complaints that an employer has been guilty of unfair labor practices under the pending legislation. Wages and hours, apart from minimum standards prescribed by the codes, are a matter of give and take, in which conciliation serves a useful function. But the rights of labor under section 7 (a), or under the Wagner-Connery bill, are written into the law to be enforced, not to be bargained about or compromised. When a complaint of law violation is presented to the National Labor Relations Board or one of its regional boards, it is the function of the Board to see that the law is vindicated. Compliance with the law is often obtained without the necessity of formal hearings, or after hearing and before enforcement processes are involved; but obtaining such compliance is quite different from the mediation which is the function of the Conciliation Service of the Department in settling disputes about wages and working conditions.

As Senator Wagner said in his testimony before the Senate Committee on Education and Labor:

"The atmosphere of compromise and adaptation is perfectly suited to the settlement of disputes concerning hours and wages where shifting scales are fitting to particular conditions. But it is unsuited to section 7 (a) which Congress intended for universal application, not universal modification. The practical effect of letting each disputant bargain and haggle about what section 7 (a) means is that the weakest groups which need its basic protection most receive it the least."

The National Labor Relations Board, as set up by Executive order of June 29, 1934, though it was directed to make its reports to the President through the Secretary of Labor, and directed not to duplicate the mediatory and statistical work of the Department, has nevertheless been, in its administration of section 7 (a) and its control of its own personnel and expenditures, an agency

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independent of the Department. This independence has not resulted in the duplication of work which the Secretary fears as likely to result from the bill as it passed the Senate. The Board has taken pains not to encroach upon the work of the conciliation service of the Department.

[14] It has proceeded under a harmonious working arrangement with the Department, specifying the respective functions of the board and the Department. It has found no difficulty, indeed has had the warmest cooperation of the Department, in the matter of making use of the Department's statistical and research agencies and other facilities. To make it abundantly clear that there shall be no duplication of work, the Senate committee inserted an amendment, which was entirely agreeable to the Board, forbidding the Board to appoint persons to engage in mediation, conciliation, or statistical work when the services of such persons may be obtained from the Department of Labor. That provision also appears in section 4 of H. R. 7978. A similar provision in section 1 (b) of the Executive order under which the Board now operates has proven entirely satisfactory.

The fact that the administrative and quasi-judicial functions of the Board should be kept distinct from the work of mediation and conciliation is an added reason why its functions should not be transferred to the jurisdiction of the Secretary of Labor. The tendency toward confusion of the two functions is enhanced by confining them both to the Labor Department.

We conclude that every consideration of congressional precedent in like cases of efficiency, of giving the Board an assured independence in its judicial and administrative work, requires that the Board be established as an independent agency in the executive branch of the Government.

With this one exception noted, the National Labor Relations Board heartily endorses H. R. 7978 as a statesmanlike contribution to healthy labor relations and industrial peace.

Sincerely yours,

FRANCIS BIDDLE, *Chairman.*

The other amendment to this section is merely clarifying. It provides that the decision of the Supreme Court in the recent *Humphreys* case shall be embodied in this statute so as not to leave the matter open to further litigation. The Court held that a Federal Trade Commissioner could not be removed by the President except for neglect of duty. There was considerable language in the opinion indicating that a quasi-judicial body would stand a better chance of favorable treatment if it were divorced from the executive branch of the Government.

Section 4. This section deals with matters such as the appointment and salaries of members of the Board, the appointment of personnel by the Board, the transfer of the personnel and records of the old Board established on June 29, 1934, by Executive Order No. 6763, pursuant to Public Resolution No. 44. It is also made clear that orders and proceedings in the courts pursuant to the public resolution, to which the old Board is a party, shall be continued by the Board in its discretion, in order that the important questions of law therein involved may be brought to final determination in the highest courts.

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In connection with this section, the committee wishes to emphasize two points.

First, there is no conflict with or duplication of the functions of the Department of Labor in its statistical and conciliation work. The bill expressly provides that:

> Nothing in this act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

Conciliation or mediation is desirable in disputes or differences as to wages and hours or conditions of work, where friendly adjustment requires give and take and the compromising of conflicting views.

The work of the Board and its agents or agencies, on the other hand, is quasi-judicial in character, dealing with the investigation and determination of charges of unfair labor practices as defined in the bill, and questions of representation for the purposes of collective [15] bargaining. This, of course, does not preclude securing compliance, either by a stipulation procedure or otherwise, prior to formal hearing or application to the courts. But the Board and its agents or agencies are required to carry out the declared will of Congress as provided in this definite legislation; the law must have application in all cases, and must not be haggled about or compromised because of the exigency of a particular situation or the weakness of a particular employee group as against a more powerful employer. Under the bill it is contemplated that the Board, its agents or agencies, will not confuse the quasi-judicial nature of their function by intruding upon the regular work of the Conciliation Service of the Department of Labor.

Second, the section authorizes the Board to appoint regional directors and to establish such regional, local, or other agencies as may from time to time be needed. The Board itself cannot be expected in the ordinary case to travel to the scene of dispute; nor can it be expected that the parties or their witnesses must be brought before the Board at the center of Government in Washington. Upon the efficiency of permanently established, compensated regional officers and regional agencies operating under the direction of the Board at the source of dispute, will thus depend in an important measure the effective administration of the law.

The effect of the first amendment to subsection (b) is merely to strike out the provision that proceedings in cases of the present National Labor Relations Board shall be conducted by the new Board. Since the President through the Attorney General has already ordered the discontinuance of these cases, the old language in the bill providing for their continuance should certainly be deleted.

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The purpose of the second amendment to subsection (b) is to give a permanent civil-service status to those employees transferred from the old Board who are required to be under the civil service by section 4 (a) of the bill.

Section 5. This is a provision commonly incorporated in similar statutes. The importance of holding inquiries necessary to the functions of the Board at places convenient to their proper and expeditious handling, has already been pointed out above.

Section 6. This is a common provision authorizing the Board to make, amend, and rescind such rules and regulations as may be found necessary to implement and carry out the provisions of the bill. It is important to note that the rules will be effective only upon due publication, so that there may be no claims of doubt or ignorance as to their content.

RIGHTS OF EMPLOYEES

The first unfair labor practice in section 8, taken in conjunction with the rights stated in section 7, is merely a restatement of a portion of the language of section 7 (a) of the National Industrial Recovery Act, quoted previously in this report. Similar pronouncements have been made in the Railway Labor Act of 1934, and in other acts of Congress (48 Stat. 1185, sec. 2 (Railway Labor Act of 1934); 44 Stat. 577, sec. 2 (Railway Labor Act of 1926); 47 Stat. 70, sec. 2 (Norris Anti-Injunction Act); 47 Stat. 1481, secs. 77 (p) and (q) (Bankruptcy Act); 48 Stat. 214, sec. 7 (e) (Emergency Transportation Act)).

[16] Objection is constantly made that the bill is limited to unfair labor practices by employers. It is contended that the bill should prohibit "anyone," including, of course, an employee or labor organization, from interfering with, restraining or coercing employees in the exercise of these rights, and that without such provision, the bill is "unfair," "one sided," and would lead to the domination of industry by organized labor. But it is clear that corresponding to the right of employees to be free from interference, etc., by their employer in their organizational activities, is the right of the other party to the negotiations, the employer, to be free in his designation of representatives for that purpose. The Railway Labor Act contains such a reciprocal provision that neither employers nor employees shall in any way interfere with, influence, or coerce the other in their choice of representatives (sec. 2 (3)), but does not deal with organizational activities by employees or labor organizations. Such a reciprocal provision, forbidding employees to interfere with the right of employers to choose their representatives for collective bargaining, would

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be a merely formal requirement, ignoring the realities of the situation. In the light of common knowledge, it can hardly be said that this right of employers needs protection under this bill. Organizations of employers in trade associations and in national organizations of such trade associations, have blanketed the country; the integration of business into larger corporate units and the formation of such trade associations has not been stopped by the antitrust laws.

Furthermore, a provision forbidding employees to interfere with the right of employers to choose their representatives would not satisfy the opponents of the bill. What is really sought is a legal strait jacket upon labor organizations, on the specious theory that such organizations have no more legitimate concern in the organization of employees than have the employers themselves. But the bill seeks to redress an inequality of bargaining power by forbidding employers to interfere with the development of employee organization, thereby removing one of the issues most provocative of industrial strife and bringing about a general acceptance of the orderly procedure of collective bargaining under circumstances in which the employer cannot trade upon the economic weakness of his employees.

The report on S. 1958, by the Senate Committee on Education and Labor, deals fully and conclusively with this topic. We incorporate a portion of that report:

> There is an even more important reason why there should be no insertion in the bill of any provision against coercion of employees by employees or labor organizations. Courts have held a great variety of activities to constitute "coercion": a threat to strike; a refusal to work on material of nonunion manufacture; circularization of banners and publications; picketing; even peaceful persuasion. In some courts, closed-shop agreements or strikes for such agreements are condemned as "coercive." Thus, to prohibit employees from "coercing" their own side would not merely outlaw the undesirable activities which the word connotes to the layman, but would raise in Federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organizations, ghosts which it was supposed Congress had laid low in the Norris-LaGuardia Act.
>
> Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police-court measure. The remedies against such acts in the State and Federal courts and by the invocations of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. The Norris-LaGuardia Act does not deny to employers relief in the Federal Courts [17] against fraud, violence, or threats of violence. (See 29 U. S. C., sec. 104 (e) and (i).)
>
> Racketeering under the guise of labor-union activity has been successfully enjoined under the anti-trust laws when it affected interstate commerce. The latest case along these lines is *United States* v. *Local No. 167 et al.* (291 U. S. 293).
>
> In addition, the procedure set up in this bill is not nearly so well suited as is existing law to the prevention of such fraud and violence. Deliberations and

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hearings by the Board, followed by orders that must be referred to the Federal courts for enforcement, are methods of procedure that could never be sufficiently expeditious to be effective in this connection.

The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board in every case with countercharges and recriminations that would prevent it from doing the task that needs to be done. There is hardly a labor controversy in which during the heat of excitement statements are not made on both sides which, in the hands of hostile or unsympathetic courts, might be construed to come under the common-law definition of fraud, which in some States extends even to misstatements innocently made, but without reasonable investigation. And if the Board should decide to dismiss such charges, its order of dismissal would be subject to review in the Federal courts.

Proposals such as these under discussion are not new. They were suggested when section 7 (a) of the National Industry Recovery Act was up for discussion, and when the 1934 amendments to the Railway Labor Act were before Congress. In neither instance did they command the support of Congress.

The succeeding unfair labor practices are intended to amplify and state more specifically certain types of interference and restraint that experience has proved require such amplification and specification. These specific practices, as enumerated in subsections (2), (3), (4), and (5), are not intended to limit in any way the interpretation of the general provisions of subsection (1).

The second unfair labor practice prohibits an employer from dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it. It is provided, however, that subject to rules and regulations made and published by the Board, an employer may permit employees to confer with him during working hours without loss of time or pay. This section has its counterpart in provisions of other Federal statutes, such as the Railway Labor Act amendments of 1934, section 2; the Bankruptcy Act amendments of 1933 and 1934; and the Emergency Transportation Act, section 7 (e).

It is reliably estimated that about 70 percent of the company unions now in existence were established subsequent to the passage of section 7 (a) of the National Industrial Recovery Act. According to the semiannual report of the National Labor Relations Board to the President for the period July 9, 1934, to January 9, 1935, such company unions were a primary or attendant cause of the disputes in about 30 percent of the cases heard by the National Board; and the great majority of such company unions had become active in contemplation of or contemporaneously with a trade union organizing movement, or in close relation to a strike. Employer-promoted unions are most prevalent in the larger plants and industries, where the bargaining power of the individual worker is very weak, and, curiously enough, where the managements have hitherto been opposed

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to organization of their workers. It is of the essence that the right of employees to self-organization and to join or assist labor organizations should not be reduced to a mockery by the imposition of employer-controlled labor organizations, particularly where such organizations are limited to the employees of the particular employer and have no potential economic strength.

[18] Nothing in the bill prohibits the formation of a company union, if by that term is meant an organization of workers confined by their own volition to the boundaries of a particular plant or employer. What is intended is to make such organization the free choice of the workers, and not a choice dictated by forms of interference which are weighty precisely because of the existence of the employer-employee relationship. The forms which such interference may take have been disclosed in the experience of the labor boards engaged in the investigation of charges of violation of section 7 (a) during the past 2 years. These are of course matters for decision on the facts of the individual case. The most commonly recognized forms of interference have been financial support, participation in the formulation of the constitution or bylaws or in the internal management of the company union, espionage, and the like. An extremely common form of interference is the provision in the constitution or bylaws of company unions that changes may not be made except with the consent of the employer. The prohibition of financial support is particularly justified. Collective bargaining is reduced to a sham when the employer sits on both sides of the table by supporting a particular organization with which he deals, by the payment of added compensation to their representatives, or by permitting such representatives to conduct organizational work among the employees during working hours without deduction of pay.

How often it has been said by employers who object to "outside unions" that their representatives "agitate" among the employees during working hours and that employees affiliated with such organizations "disturb" other employees. No action could be more provocative of resentment, unrest, and strife than these forms of financial support. On this subject it is pertinent to quote a portion of the opinion of the National Labor Relations Board in *Matter of B. F. Goodrich Co.* (1 N. L. R. B. 181, 184 (1934)):

> **Another feature of the plan which raises a serious problem is the fact that it is financed by the company, and that, in particular, the company pays extra salaries to the employee representatives under the plan. At the time when the plan was initiated by the company there existed a group of employees within the plant, we do not know how numerous, who favored affiliation with an outside union as their designated agency for collective bargaining. We may assume that there were also at the plant employees who preferred a plant**

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organization. At this juncture we believe that the company interfered with the self-organization of its employees when it threw the great weight of its financial support in favor of the group of employees who wanted a plant organization, to the competitive disadvantage of the group of employees who wanted representation by an outside union. In effect this was a form of discrimination which handicapped the efforts of one group of employees in promoting their ideas of self-organization. The tendency of the thing at the time of the inauguration of the plan was corrupting and the continuance of financial support by the company at the present time is corrupting. This is particularly true of the payment of salaries to representatives. However, single-minded the elected represenatives under the plan might be in their devotion to the interests of the employees, the provision for paying extra salaries to the approximately 150 employee representatives causes their independence of employer domination to be highly dubious. It is improper for the company to influence the choice of employees in the manner described above, which involves, in substance, the subsidizing of an active group of propagandists among the employees for the type of employee representation the company would prefer to deal with.

The specific practices to which we have adverted have been recognized by our highest courts as forms of interference. In *Texas & New Orleans R. R. Co.* v. *Brotherhood of Railway Clerks* (281 U. S. [19] 548, 560), Chief Justice Hughes, writing for a unanimous Court, stated in a decision under the Railway Labor Act of 1926:

> The circumstances of the soliciting of authorizations and memberships on behalf of the association, the fact that employees of the railroad company who were active in promoting the development of the Association were permitted to devote their time to that enterprise without deduction from their pay, the charge to the railroad company of expenses incurred in recruiting members of the association, the reports made to the railroad company of the progress of these efforts, and the discharge from the service of the railroad company of leading representatives of the brotherhood and the cancelation of their passes, gave support, despite the attempted justification of these proceedings, to the conclusion of the courts below that the railroad company and its officers were actually engaged in promoting the organization of the association in the interest of the company in opposition to the brotherhood, and that these activities constituted an actual interference with the liberty of the clerical employees in the selection of their representatives.

It should be noted finally that the employer can be said to "dominate" the "formation or administration of a labor organization" where several of these forms of interference exist in combination, and he is able thereby to corrupt or override completely the will of employees.

The third unfair labor practice prohibits an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organziation. This spells out in greater detail the provisions of section 7 (a) prohibiting "yellow-dog" contracts and interference with self-organization. This interference may be present in a variety

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of situations in this connection, such as discrimination in discharge, lay-off, demotion or transfer, hire, forced resignation, or division of work; in reinstatement or hire following a technical change in corporate structure, a strike, lock-out, temporary lay-off, or a transfer of the plant.

Nothing in this subsection prohibits interference with the normal exercise of the right of employers to select their employees or to discharge them. All that is intended is that the employer shall not by discriminatory treatment in hire or tenure of employment or terms or conditions of employment, interfere with the exercise by employees of their right to organize and choose representatives. It is for this reason that the employer is prohibited from encouraging or discouraging membership in any labor organization by such discrimination.

The proviso to the third unfair labor practice, dealing with the making of closed-shop agreements, has been widely misrepresented. The proviso does not impose a closed shop on all industry; it does not give new legal sanctions to the closed shop. All that it does is to eliminate the doubts and misconstructions in regard to the effect of section 7 (a) upon closed-shop agreements, and the possible repetition of such doubts and misconstructions under this bill, by providing that nothing in the bill or in section 7 (a) or in any other statute of the United States shall illegalize a closed-shop agreement between an employer and a labor organization, provided such organization has not been established, maintained, or assisted by any action defined in the bill as an unfair labor practice and is the choice of a majority of the employees, as provided in section 9 (a), in the appropriate collective bargaining unit covered by the agreement when made. The bill does nothing to legalize the closed-shop agreement in the [20] States where it may be illegal; but the committee is confident that it would not be the desire of Congress to enact a general ban upon closed-shop agreements in the States where they are legal. And it should be emphasized that no closed shop may be effected unless it is assented to by the employer.

The fourth unfair labor practice relates to discharge or other discrimination against an employee because he has filed charges or given testimony under the bill.

The fifth unfair labor practice, regarding the refusal to bargain collectively, rounds out the essential purpose of the bill to encourage collective bargaining and the making of agreements.

REPRESENTATIVES AND ELECTIONS

Majority rule.—Section 9 (a) incorporates the majority rule principle, that representatives designated for the purposes of collective

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bargaining by the majority of employees in the appropriate unit shall be the exclusive representatives of all the employees in that unit "for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." As a necessary corollary it is an act of interference (under sec. 8 (1)) for an employer, after representatives have been so designated by the majority, to negotiate with individuals or minority groups in their own behalf on the basic subjects of collective bargaining.

The misleading propaganda directed against this principle has been incredible. The underlying purposes of the majority rule principle are simple and just. As has frequently been stated, collective bargaining is not an end in itself; it is a means to an end, and that end is the making of collective agreements stabilizing employment relations for a period of time, with results advantageous both to the worker and the employer. There cannot be two or more basic agreements applicable to workers in a given unit; this is virtually conceded on all sides. If the employer should fail to give equally advantageous terms to nonmembers of the labor organization negotiating the agreement, there would immediately result a marked increase in the membership of that labor organization. On the other hand, if better terms were given to nonmembers, this would give rise to bitterness and strife, and a wholly unworkable arrangement whereby men performing comparable duties were paid according to different scales of wages and hours. Clearly then, there must be one basic scale, and it must apply to all.

It would be undesirable if this basic scale should result from negotiation between the employer and unorganized individuals or a minority group, for the agreement probably would not command the assent of the majority and hence would not have the stability which is one of the chief advantages of collective bargaining. If, however, the company should undertake to deal with each group separately, there would result the conditions pointed out by the present National Labor Relations Board in its decision in the *Matter of Houde Engineering Corporation* (1 N.L.R.B. 35 (Aug. 30, 1934)):

> It seems clear that the company's policy of dealing first with one group and then with the other resulted, whether intentionally or not, in defeating the object of the statute. In the first place, the company's policy inevitably produced a certain amount of rivalry, suspicion, and friction between the leaders of the [21] committees. * * * Secondly, the company's policy, by enabling it to favor one organization at the expense of the other, and thus to check at will the growth of either organization, was calculated to confuse the employees, to make them uncertain which organization they should from time to time adhere to, and to maintain a permanent and artificial division in the ranks.

Speaking of the company's suggested alternative that it deal with a composite committee made up of representatives of the two major

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conflicting groups, supplemented by other individual employees, the Board pointed out:

> This vision of an employer dealing with a divided committee and calling in individual employees to assist the company in arriving at a decision is certainly far from what section 7 (a) must have contemplated in guaranteeing the right of collective bargaining. But whether or not the workers' representation by a composite committee would weaken their voice and confuse their counsels in negotiating with the employer, in the end whatever collective agreement might be reached would have to be satisfactory to the majority within the committee. Hence the majority representatives would still control, and the only difference between this and the traditional method of bargaining with the majority alone would be that the suggestions of the minority would be advanced in the presence of the majority. The employer would ordinarily gain nothing from this arrangement if the two groups were united, and if they were not united he would gain only what he has no right to ask for, namely, dissension and rivalry. * * *

Since the agreement made will apply to all, the minority group and individual workers are given all the advantage of united action. And they are given added protection in various respects. First, the proviso to section 9 (a) expressly stated that "any individual employee or a group of employees shall have the right at any time to present grievances to their employer." And the majority rule does not preclude adjustment in individual cases of matters outside the scope of the basic agreement. Second, agreements more favorable to the majority than to the minority are impossible, for under section 8 (3) any discrimination is outlawed which tends to "encourage or discourage membership in any labor organization." Nor does the majority rule in itself establish a closed shop or encourage a closed shop, that being a matter of negotiation and agreement requiring the assent of the employer, as discussed above.

In view of what has been said, it is apparent that those who oppose majority rule in effect oppose collective bargaining and the making of collection agreements as the end thereof, by seeking to create conditions making such accomplishments impossible. Those who profess to favor collective bargaining and the general purposes of this bill should favor majority rule, which is the only practical method of achieving the desired ends. Majority rule is at the basis of our democratic institutions. The same organized employer groups who now oppose majority rule for workers have publicly announced their adherence to it as applied to the formulation of codes of fair competition. It has been the experience of the National Labor Relations Board in cases before it that employers opposing majority rule wished only to keep their responsibilities diffused and to maintain in the picture a complacent minority group, typically a company union, so that no collective agreement might be reached at all. This motivation has been brought to the surface in specific cases where employers

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refused to recognize the rule when trade unions represented the majority, although in the course of the previous history of the disputes in question, when the opposing employer-promoted company unions had a majority, the employers had invoked the majority rule as the excuse [22] for their refusal to deal with the same trade unions. Thus in *Matter of Guide Lamp Corporation* (1 N. L. R. B. 48 (1934), the Board said :

> * * * The company has not always felt the same consideration it now expresses for minority groups. In October 1933 the union addressed a letter to the company requesting an opportunity to meet and bargain collectively.
>
> The company's letter in reply stated that the Guide Employees' Association represented 70 percent of the employees and concluded:
>
> "If we begin the practice of negotiation with each group which presents itself, we will not be complying with the provisions of the National Recovery Act, and a great deal of confusion would result. If there is any complaint or grievance which you wish to present, we shall be glad to consider it, but any negotiation or collective bargaining must be with the committee representing the great majority of our employees."

Many precedents for majority rule in labor relation may be cited. Thus it has been applied by the National War Labor Board, the Railway Labor Board, the National Labor Board, and by the three boards established under Public Resolution 44, the National Steel Labor Relations Board, the National Textile Labor Relations Board, and the National Labor Relations Board. The rule was expressly written into the statute books by Congress in the Railway Labor Act of 1934: "Employees shall have the right to bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act" (sec. 2 (4).

Section 9 (b) provides that the Board shall determine whether in order to effectuate the policy of the bill (as expressed in sec. 1), the unit appropriate for the purposes of collective bargaining shall be the craft unit, plant unit, employer unit, or other unit. This matter is obviously one for determination in each individual case, and the only possible workable arrangement is to authorize the impartial governmental agency, the Board, to make that determination. There is a similar provision in the Railway Labor Act of 1934 (sec. 2 (9); 2 (4)).

The purpose of the amendment to section 9 (b), which was suggested by the Attorney General's Office, is merely to provide some nominal standards in connection with the provision which allows the Board to designate units for the purpose of holding elections. These standards will make it more likely that the bill will receive a favorable reception in the courts.

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Elections.—Section 9 (c) makes provision for elections to be conducted by the Board or its agents or agencies to ascertain the representatives of employees. The question will ordinarily arise as between two or more bona fide organizations competing to represent the employees, but the authority granted here is broad enough to take in the not infrequent case where only one such organized group is pressing for recognition, and its claim of representation is challenged. It is, of course, contemplated that pursuant to its authority under section 6 (a), the Board will make and publish appropriate rules governing the conduct of elections and determining who may participate therein.

The committee adheres, with the present National Labor Relations Board, to the common belief that the device of an election in a democratic society has, among other virtues, that of allaying strife, not provoking it. Obviously the Board should not be required to wait until there is a strike or immediate threat of strike. Where [23] there are contending factions of doubtful or unknown strength, or the representation claims of the only organized group in the bargaining unit are challenged, there exists that potentiality of strife which the bill is designed to eliminate by the establishment of this machinery for prompt, governmentally supervised elections.

As previously stated in this report, the efficacy of Public Resolution 44 has been substantially impaired by the provision for court review of election orders prior to the holding of the election. Section 9 (d) of the bill makes clear that there is to be no court review prior to the holding of the election, and provides an exclusive, complete, and adequate remedy whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an election or other investigation pursuant to section 9 (c). The hearing required to be held in any such investigation provides an appropriate safeguard and opportunity to be heard. Since the certification and the record of the investigation are required to be included in the transcript of the entire record filed pursuant to section 10 (e) or (f), the Board's actions and determinations of fact and law in regard thereto will be subject to the same court review as is provided for its other determinations under sections 10 (b) and 10 (c).

The amendment to 9 (c) merely provides for due notice in connection with hearings of the Board.

PREVENTION OF UNFAIR LABOR PRACTICES

The Board is empowered, according to the procedure provided in section 10, to prevent any person from engaging in any unfair labor practice listed in section 8 "affecting commerce", as that term is defined

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in section 2 (7). This power is vested exclusively in the Board and is not to be affected by any other means of adjustment or prevention. The Board is thus made the paramount agency for dealing with the unfair labor practices described in the bill.

The procedure provided is analogous to that in the Federal Trade Commission Act (sec. 5) and is familiar to all students of administrative law. Provisions are made to assure the basic protections against arbitrary action which are generally regarded as prerequisite to due process of law. The provision that the technical rules of evidence shall not be controlling is but a restatement of the law generally recognized as applicable in comparable administrative tribunals. The court review afforded aggrieved parties under subsection (f) gives an adequate opportunity for review of the procedure before the Board. It is contemplated, of course, that the Board will establish rules governing procedure in greater detail, in such manner as will be conducive to the proper dispatch of business and to the ends of justice.

If upon all the testimony taken the Board decides that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board, according to the usual practice of similar administrative bodies, states its findings of fact and issues an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action as will effectuate the policies of the bill; i. e., as defined in section 1, to encourage the practice of collective bargaining and to protect the exercise by the worker of full freedom of association, self-organization, and designation of [24] representatives of his own choosing. The orders will of course be adapted to the needs of the individual case; they may include such matters as refraining from collective bargaining with a minority group, recognition of the agency chosen by the majority for the purposes of collective bargaining, posting of appropriate bulletins, refraining from bargaining with an organization corrupted by unfair labor practices. The most frequent form of affirmative action required in cases of this type is specifically provided for, i. e., the reinstatement of employees with or without back pay, as the circumstances dictate. No private right of action is contemplated. Essentially the unfair labor practices listed are matters of public concern, by their nature and consequences, present or potential; the proceeding is in the name of the Board, upon the Board's formal complaint. The form of injunctive and affirmative order is necessary to effectuate the purpose of the bill to remove obstructions to interstate commerce which are by the law declared to be detrimental to the public weal.

The form and nature of the Board's order will, of course, be subject to court review, along with the other determinations and actions of

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the Board in the case, both as to the facts and the law, in the manner provided in subsection (e) or (f).

The amendment to section 10 (b) embraces merely an improvement in phraseology. The appropriate term for the interposition of a person in a quasi-judicial procedure is "intervene" rather than "appear."

If the person complained of fails or neglect to obey the Board's order, it is provided that the Board shall be empowered to petition any appropriate Circuit Court of Appeals of the United States for the enforcement of such order, and in the event that all the circuit courts to which application may be made are in vacation, the Board may in its discretion apply to the district court. Express provision is made for the granting of appropriate temporary relief or a restraining order, and the court is empowered to enter upon the pleadings, testimony, and proceedings set forth in the transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board.

According to a similar procedure, any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may claim a review of such order in the appropriate circuit court of appeals, or in the Court of Appeals of the District of Columbia. It is intended here to give the party aggrieved a full, expeditious, and exclusive method of review in one proceeding after a final order is made. Until such final order is made the party is not injured, and cannot be heard to complain, as has been held in cases under the Federal Trade Commission Act.

The first amendment to section 10 (e) embodies an improvement in procedure. It quickens action by allowing the Board to go into the courts for consideration of its order by first proving in a separate action that its order has been disobeyed. This short cut was effected in another way by an amendment to the Interstate Commerce Commission Act in 1920, and has been suggested in substance by the Attorney General's office.

The second amendment to section 10 (e) is a modifying amendment. Instead of the court being ordered to enter a decree, the amendment provides that the court shall have power to enter a decree. It is [25] believed that this amendment will meet with more favorable action in the courts than the prior language.

The third amendment to section 10 (e) is merely clarifying, but it embodies no change in substance. A decree that is modifying has to be enforced as well as one that is enforced in full, and the new language covers this situation.

The other amendments in the section are to make the provisions correspond to the foregoing changes.

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INVESTIGATORY POWERS

For the purpose of all hearings and investigations which in the opinion of the Board are necessary and proper for the exercise of the powers vested in it by section 9 and section 10, dealing with investigations of questions concerning the representation of employees and unfair labor practices, there is granted in section 11 the subpena powers typically provided for similar administrative bodies, without which their work would be ineffectual. The section grants no roving commission, but is limited to the exercise of powers and functions embodied in sections 9 and 10. Any member of the Board is empowered to issue subpenas requiring the attendance and testimony of witnesses (including, of course, the person complained of), and the production of any evidence that relates to matters under investigation or in question. In case of contumacy or refusal to obey a subpena, the Board may make application to the appropriate district court, which is empowered to issue orders requiring obedience, and to punish for contempt if necessary.

Section 11 (4) provides for the appropriate service of all process issued by the courts to which application may be made under section 11 (2) or sections 10 (e) or (f). This provision is comparable to that found, for example, in Securities Exchange Act, section 21 (c) and 27; Clayton Act, section 12; and Petroleum Control Act of 1935, section 10 (b).

Under section 12 any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of the duties pursuant to the bill shall be punished by a fine not in excess of $5,000 or by imprisonment not in excess of 1 year, or both. This guarantees that the Board will be protected in the conduct of its work, and, that tampering with records, interfering with witnesses, or the doing of other acts of like nature will be punishable as a criminal offense. The section of course can have no application to the exercise of the right to strike.

LIMITATIONS

Section 13 is designed to preclude the interpretation of any provision in the bill so as to "interfere with or impede or diminish in any way the right to strike." Public Resolution 44, passed by a unanimous Congress last year, likewise provided (sec. 6):

Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities.

Section 15 contains the usual separability provision.

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[26]

MINORITY VIEW

At the very outset I want to make my position clear. I am wholeheartedly in favor of this bill. I believe it to be a great step for the protection of the rights of organized labor of the United States; and irrespective of whether or not the following suggestions are adopted I shall vote for the bill.

I find myself unable to agree with the decision of the committee to affiliate the National Labor Relations Board with the Department of Labor. It is clearly immaterial whether this affiliation is accomplished merely by providing generally that the Board shall be located in the Department of Labor, or by providing in detail that the Secretary of Labor shall control the personnel, the regional agencies, and the budget of the Board. Regardless of variations in language, if the Board is placed within the Department, the Secretary of Labor will control the purse strings, and that control will be the decisive factor in determining the extent and the character of the personnel, the nature of the work done, and the administrative set-up of the Board, both in Washington and throughout the country. This in turn will be determinative of the major policies of the Board, as I shall presently discuss. On this issue there can be no compromise; either the Board must be completely independent or it must be reduced to the level of a departmental bureau.

I should have thought that even without regard for the past history of the National Labor Relations Board and the testimony before this committee, both of which seem to me compelling upon this point, precedent alone would have induced the establishment of the Board as an independent agency. The Board is to be solely a quasi-judicial body with clearly defined and limited powers. Its policies are marked out precisely by the law. That such an agency should be free from any other executive branch of the Government has been the recognized policy of Congress. Ready examples are the Interstate Commerce Commission, the Federal Trade Commission, the Communications Commission, the Securities and Exchange Commission, the National Mediation Board, and agencies that are even less judicial in character, such as the Federal Housing Administration and the Reconstruction Finance Corporation. It seems strange that this committee, which has built up so fine a record in the interests of labor, should be grudgingly unwilling to establish for the protection of labor's most basic rights an agency as dignified and independent, and as likely to attain the prestige that flows from such independence, as those which have been established to protect the interests of other groups.

The vital need for the complete independence of a quasi-judicial board that must enforce the law has been best illustrated by the col-

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lapse of section 7 (a) of the Recovery Act. That famous section broke down, not so much because the Recovery Act into which it was written did not contain adequate enforcement provisions, but [27] because the actual enforcement of 7 (a) was tied up with the wrong agencies. The Labor Board, it is true, could make "decisions"; but actual enforcement rested with the National Recovery Administration and the Department of Justice. Since the N. R. A. had other functions, such as code making, etc., which required constant cultivation of friendly and conciliatory feelings between the N. R. A. and those with whom it had to deal, the N. R. A. has been forced repeatedly to compromise and bargain away the specific rights guaranteed by section 7 (a), and the Department of Justice likewise has been reluctant to act upon this touchy subject, because of entirely extrinsic consideration of government policy that should have had nothing to do with section 7 (a). The complete frustration of the present National Labor Relations Board has resulted from this very simple failure to maintain the traditional and tested division between quasi-judicial bodies on the one hand and the general work of executive departments tied up with the governmental policy of a particular administration, on the other.

This anomalous situation would be perpetuated by placing the National Labor Relations Board in the Department of Labor. The Department is an executive arm of the Government. The Secretary of Labor is an officer of a particular administration, and I say this from the long-range point of view, and with due regard for the abilities of the present Secretary. The Department is thus quickly susceptible to political repercussions, and it is charged with many administrative duties involving constant compromise between industry and government. Thus the Board would quickly be swallowed up in the general policies of the Department of Labor.

These difficulties are not answered at all by insisting that the judicial decisions of the National Labor Relations Board would not be subject to review by the Secretary of Labor or by any officer in the executive branch of the Government. If in fact the Board were to be independent in its actions, there would be no reason for anyone wanting to set it up in the Department of Labor. But that is not the case; the final "judicial decisions" are only a small part of the work of such a Board, and by control over other stages in the enforcement process the Department of Labor would be the final arbiter of the policies of the Board.

For example, to be effective in enforcement, the Board must control complaints of unfair labor practices from their very inception. Yet this would not be the case were the Board in the Department. It is

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quite true that the proponents of placing the Board in the Department insist that there should be no mediation or conciliation done by the Board. But that does not preclude the possibility of mediation of an unfair labor practice by the Conciliation Service of the Department before the Board would act. And in the long run, that would inevitably result from locating the Board in the Department, while its advent would be hastened by an administration unsympathetic toward labor. This is the very worst kind of confusion of conciliation and quasi-judicial work, not in that the Board will do both but that both will be used at successive stages in attempting to enforce the law.

What will result from such a procedure? Conciliation at the source will not build up the kind of records that the Board might later refer to the courts for enforcement. Compromise of the law at the outset will constantly plague the Government when the time comes to [28] vindicate the law. A wide variety of interpretations without any centralizing force will create uncertainty and distrust. The National Labor Relations Board will be called into operation only where there has been a record of failure rather than success; only when the prestige of the Government has already been impaired by the failure of its agencies. Moreover, the duplication of effort and the long delay before complaints of unfair practices finally reach the Board will wreak havoc upon workers' rights. The worker who is wronged must get help quickly if at all. The injury of the long delay can never be redressed. The occasion to protest by his own collective action, once let pass, can never be recalled. These are not fancied evils; they are present now because of the very policies which I do not wish to see continued.

To prevent unfair labor practices, the National Labor Relations Board must have control of enforcement not at the end of the trail but from the very beginning. It must follow the procedure that is followed by the Federal Trade Commission in preventing unfair trade practices. No one would suggest, when there is a claim of an unfair trade practice, that there should first be mediation by the Department of Commerce and then action by the Commission in the event of failure.

In addition, if the Department of Labor is to control the first steps in regard to the prevention of unfair practices, it will have the discretion to cut enforcement off its sources. "Judicial independence" will do the Board no good as to cases that never reach it.

Thus the issue raised is a very narrow one. If the purpose of placing the National Labor Relations Board in the Department of Labor is that the Department and the Board shall function jointly to protect the rights guaranteed by section 7 (a), then the whole en-

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forcement mechanism will collapse because of dispersion of responsibility and because of an overlapping of conciliation and judicial work. And if the Board should operate independently of the Department, it is unfair to make it subject to departmental control over budget and personnel.

In view of these major considerations, which have proved controlling in every other case where the Government has set up a quasi-judicial body, the point that there might be some overlapping of statistical work by the Board and the Department of Labor is trivial and unrealistic. In fact, it is entirely appropriate to amend the bill, as has been done, to provide that the Board should not do any statistical work, mediation, or conciliation, when such services are available in the Department of Labor.

It should be repeated that the National Labor Relations Board is to be purely a quasi-judicial commission. Its prestige and efficacy must be grounded fundamentally in public approval and in equal confidence in its impartiality by Labor and Industry. If the Board is placed in the Department it will suffer ab initio from the suspicion that it is not a court, but an organ devoted solely to the interests of laboring groups. Far from helping labor, this will impair the work of the Board and render more difficult the sustaining of its supposedly impartial decisions by the Federal courts.

Finally, let me emphasize the paramount consideration that the inclusion of the Board in the Department of Labor will injure not only the Board, but the Department itself, and through it the interests of [29] labor. The Department was not established to handle all the industrial relation problems of the Government. It was not established to covet impartial or quasi-judicial functions, or to interpret laws of Conrgess. It was founded, as is too often forgotten now, as a department for labor, and to "foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment." There is more work of this type to be done than ever before and the Department is in no danger of lapsing into disuse if it is aware of its duties. I believe that labor would have fared better under the codes if the Department had remained true to its function as a militant organ for working people, rather than attempted to appear as a labor relations bureau of the Federal Government, representing all interests alike, and overzealous to guard itself against supposed encroachments. The efforts to secure control over an impartial quasi-judicial board is a definite step by the Department away from those activities which can make it most useful to the working people of America.

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The Senate bill very wisely has made the Board an independent agency. The House should follow the Senate on this very vital matter.

I also find myself unable to agree with the committee in its exclusion of agricultural workers. It is a matter of plain fact that the worst conditions in the United States are the conditions among the agricultural workers. They have been brought to the public attention many times; for example, by the investigations of the National Child Labor Committee into the horrible conditions, especially as affecting children, in the beet-sugar fields. The complete denial of civil liberty and the reign of terror in the Imperial Valley have been the subject of investigation by Government agents. Last summer saw a protracted and heroic strike by the terribly exploited union workers in the fertile fields of Hardin County, Ohio, against their employers. These workers were organized in a federal local of the A. F. of L. They were victims of the usual type of oppression which was called to public attention in the press.

However, the most conclusive proof that there must be Federal action to protect the right of agricultural workers to organize is to be found in the situation in Arkansas. In that State, within the last year, there has come into being an admirable union of agricultural workers, the Southern Tenant Farmers Union. It has been incorporated under the laws of the State. Its immediate demands are entirely reasonable and its methods have been extraordinarily peaceful. Yet that union is at present holding no meetings on advice of its counsel who says that it cannot be protected from terroristic attacks. Armed planters have patrolled the roads looking for the principal organizers of the union. The president of the union, a former rural school teacher, was driven out of the county by threats of lynching. Members of the union have been beaten up. Some of them have been cast in jail from which they were ultimately delivered but only in one or two cases after they had been confined on trumped charges for 45 days. Meetings have been forcibly broken up. The lawyer for the union is C. T. Carpenter, one of the outstanding lawyers of the State of Arkansas. He was waited on by an armed mob one night in his own home. He met them at the door with a pistol in his hand. The mob left but not without firing shots at the house.

[30] What these people in Arkansas are organizing against is the most outrageous exploitation in America. The plantation system of itself is damnable. It combines the worst evils of feudalism and capitalism. The overseers on the plantations go armed.

A continuance of these conditions is preparing the way for a desperate revolt of virtual serfs. Unless the right to organize peacefully can be guaranteed we shall have a continuance of virtual slavery until

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the day of revolt. The union and the exploited victims of this system have shown an amazing willingness, or rather a deep-seated anxiety, to avoid bloodshed.

I, therefore, respectfully submit that there is not a single solitary reason why agricultural workers should not be included under the provisions of this bill. The same reasons urged for the adoption of this bill in behalf of the industrial workers are equally applicable in the case of the agricultural workers, in fact more so as their plight calls for immediate and prompt action.

VITO MARCANTONIO.

[31] CHANGES IN EXISTING LAW

The bill (S. 1958) does not repeal or amend expressly any provision of law, but refers to several provisions of law which are set forth for the information of the House.

JOINT RESOLUTION

To effectuate further the policy of the National Industrial Recovery Act.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to further effectuate the policy of title I of the National Industrial Recovery Act, and in the exercise of the powers therein and herein conferred, the President is authorized to establish a board or boards authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7a, of said Act or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce, the salaries, compensation and expenses of the board or boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act.

SEC. 2. Any board so established is hereby empowered, when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees of any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize and to select their representatives for the purpose of collective bargaining as defined in section 7a of said Act and now incorporated herein.

For the purposes of such election such a board shall have the authority to order the production of such pertinent documents or the appearance of such witnesses to give testimony under oath, as it may deem necessary to carry out the provisions of this resolution. Any order issued by such a board under the authority of this section may, upon application of such board or upon petition of the person or persons to whom such order is directed, be enforced or reviewed, as the case may be, in the same manner, so far as applicable, as is provided in the case of an order of the Federal Trade Commission under the Federal Trade Commission Act.

SEC. 3. Any such board, with the approval of the President, may prescribe such rules and regulations as it deems necessary to carry out the provisions of this resolution with reference to the investigations authorized in section 1, and to assure freedom from coercion in respect to all elections.

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SEC. 4. Any person who shall knowingly violate any rule or regulation authorized under section 3 of this resolution or impede or interfere with any member or agent of any board established under this resolution in the performance of his duties, shall be punishable by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or both.

SEC. 5. This resolution shall cease to be in effect, and any board or boards established hereunder shall cease to exist, on June 16, 1935, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 of the National Industrial Recovery Act has ended.

SEC. 6. Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities. [Joint Resolution of June 19, 1934.]

* * * * * * *

[Judicial Code.] SEC. 239. In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, the court at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which instructions are desired for the proper decision of the cause; and thereupon the Supreme Court may either give binding [32] instructions on the questions and propositions certified or may require that the entire record in the cause be sent up for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there by writ of error or appeal.

[Judicial Code.] SEC. 240. (a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

(b) Any case in a circuit court of appeals where is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against its validity, may, at the election of the party relying on such State statute, be taken to the Supreme Court for review on writ of error or appeal; but in that event a review on certiorari shall not be allowed at the instance of such party, and the review on such writ of error or appeal shall be restricted to an examination and decision of the Federal questions presented in the case.

(c) No judgment or decree of a circuit court of appeals or of the Court of Appeals of the District of Columbia shall be subject to review by the Supreme Court otherwise than as provided in this section.

(The writ of error referred to in the above sections has been abolished by the act of Jan. 31, 1928, 45 Stat. 54.)

* * * * * * *

AN ACT

To amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court of the United States

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as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this act.

SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

[33](a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment.

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act.

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(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value.

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State.

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence.

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute.

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified.

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof.

(b) That substantial and irreparable injury to complainant's property will follow.

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief.

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

[34] Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of

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the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused

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shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

[35] SEC. 13. When used in this act, and for the purposes of this act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All Acts and Parts of Acts in conflict with the provisions of this Act are hereby repealed. [Act of March 23, 1932.]

* * * * * * *

[National Industrial Recovery Act] SEC. 7 (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers

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of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

* * * * * * *

[Sec. 77B of the Bankruptcy Act] (l) No judge, debtor, or trustee acting under this section shall deny or in any way question the right of employees on the property under the jurisdiction of the judge, to join the labor organization of their choice, and it shall be unlawful for any judge, debtor, or trustee to interfere in any way with the organizations of employees, or to use funds under such jurisdiction, in maintaining so-called company unions, or to coerce employees in an effort to induce them to join or remain members of such company unions.

(m) No judge, debtor, or trustee acting under this section shall require any person seeking employment on the property under the jurisdiction of the judge to sign any contract or agreement promising to join or to refuse to join a labor organization; and if such contract has been enforced on the property prior to the property coming under the jurisdiction of said judge, then the judge, debtor, or trustee, as soon as the matter is called to his attention, shall notify the employees by an appropriate order that said contract has been discarded and is no longer binding on them in any way.

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74TH CONGRESS
1ST SESSION

H. RES. 250

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 1935

Mr. CONNERY submitted the following resolution; which was referred to the Committee on Rules and ordered to be printed

RESOLUTION

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of S. 1958, a bill to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill and shall continue not to exceed hours, to be equally divided and controlled by the Chairman and ranking minority member of the Committee on Labor, the bill shall be read for amend-

ment under the five-minute rule. At the conclusion of the reading of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and the amendments thereto to final passage without intervening motion, except one motion to recommit.

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CONGRESSIONAL RECORD, HOUSE—JUNE 14, 1935
(79 Cong. Rec. 9329)

EXTENSION OF THE NATIONAL INDUSTRIAL RECOVERY ACT

Mr. SCHNEIDER. Mr. Speaker, I ask unanimous consent to extend my remarks in the Record.

The SPEAKER. Is there objection?

There was no objection.

Mr. SCHNEIDER. Mr. Speaker, since early in the session I have taken the position that any revision or extension of the National Industrial Recovery Act should provide for retention of its good features and elimination of the abuses. I believe that the social progress made through establishment of better relationships between capital and labor, elimination of child labor, and increased wages and purchasing power should be preserved. Similarly, the abuses which have become evident must be eliminated so far as possible to do so by legislative action.

The unfavorable Supreme Court decision set rather definite limits on legislation for continuation of the N. R. A., and the only proposal which has come before the House up to the present time is the stop-gap proposal, Senate Joint [9330] Resolution 113, continuing some of the present organization for the purpose of research and collection of information relative to industrial activity and trade practices.

This resolution provides also for continuation of the authority to make voluntary trade agreements and in its original form allowed business organizations making such codes or agreements to be exempted from the antitrust laws. I am firmly convinced that much of the dissatisfaction with the operation of the N. R. A. was due to the action of large business groups in taking advantage of the apparent legislative intent to waive the antitrust laws in the original act. Under the protection of the act, big business did not hesitate to impose its will upon the similar independent concerns and individuals in business and there was no firm administrative action to prevent these abuses.

The Progressive group in the House attempted to make sure that monopolies and trusts would not make further raids upon legitimate independent business and would not gouge the consumer by unreasonable price-fixing practices. Under the terms of the amendment introduced by the gentleman from Texas [Mr. MAVERICK] we attempted to specifically repeal the section waiving the antitrust laws. Upon the refusal of a majority of the committee to adopt this amendment. I could not vote for continuation of the N. R. A., even in skeleton form, so long as its real enforcing powers were eliminated, and special privileges to monopolies might be granted without the safeguard of the antitrust laws to protect the great mass of our people.

When the resolution was returned to the Senate for further action, the liberal forces there forced favorable action on the Borah amendment, under which suspension of the antitrust laws is limited to those voluntary agreements and action thereunder which put into effect the requirements of section 7 (a), including minimum wages, maximum hours, and prohibition of child labor; and which prohibits unfair

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competitive practices which do not offend against existing laws, including the antitrust laws.

Mr. Speaker, this amendment, like the proposal we advanced in the House, prevents business combines from obtaining exemption from the antitrust laws through voluntary codes and agreements which they may draw up if they desire. In view of the fact that the Senate amendment is now a part of the resolution, I can now support the resolution for extension of the National Industrial Recovery Act. I believe, however, that this legislation must be further strengthened by passage of the Wagner-Connery labor-disputes bill, without which labor is now wholly unprotected by governmental collective-bargaining guaranties, and by further action to correct fundamental maladjustments in our economic system.

CONGRESSIONAL RECORD, HOUSE—JUNE 17, 1935
(79 Cong. Rec. 9454)

LABOR-DISPUTES BILL

Mr. CONNERY. Mr. Speaker, I ask unanimous consent that a privileged status be given to the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a national labor relations board, and for other purposes, that general debate be confined to the bill, and continue not to exceed 4 hours, to be equally divided and controlled by the gentleman from California [Mr. WELCH] and myself.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

Mr. SNELL. What is the bill?

Mr. CONNERY. It is the Wagner labor-disputes bill.

Mr. SNELL. For the present, Mr. Speaker, I object. We have a Rules Committee to take care of such matters.

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House Calendar No. 162

74TH CONGRESS
1ST SESSION

H. RES. 263

Report No. 1259

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 1935

Mr. O'CONNOR, from the Committee on Rules, reported the following resolutions; which was referred to the House Calendar and ordered to be reprinted

RESOLUTION

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of S. 1958, a bill to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill and shall continue not to exceed three hours, to be equally divided and controlled by the Chairman and ranking minority member of the Committee on Labor, the bill shall be read for amendment under the five-minute rule. At the conclusion of the

reading of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and the amendments thereto to final passage without intervening motion, except one motion to recommit, with or without instructions.

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74TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 1259

CONSIDERATION OF S. 1958

JUNE 18, 1935.—Referred to the House Calendar and ordered to be printed

Mr. O'CONNOR, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 263]

The Committee on Rules, having had under consideration House Resolution 263, report the same to the House with the recommendation that the resolution do pass.

CONGRESSIONAL RECORD, HOUSE—JUNE 19, 1935

(79 Cong. Rec. 9668)

LABOR-DISPUTES BILL

Mr. O'CONNOR. Mr. Speaker, I call up House Resolution 263.

The Clerk read the resolution, as follows:

House Resolution 263

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of S. 1958, a bill to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill and shall continue not to exceed 3 hours, to be equally divided and controlled by the Chairman and ranking minority member of the Committee on Labor, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and the amendments thereto to final passage without intervening motion, except one motion to recommit, with or without instructions.

Mr. O'CONNOR. Mr. Speaker, I yield 30 minutes to the gentleman from Pennsylvania [Mr. RANSLEY].

Mr. MARTIN of Massachusetts. Mr. Speaker, I make the point of order that there is not a quorum present.

The SPEAKER. Evidently there is no quorum present.

Mr. O'CONNOR. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

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[Roll No. 97]

Andrews, N. Y.	Goodwin	Palmisano
Bankhead	Gregory	Patman
Bolton	Hart	Peyser
Buckley, N. Y.	Higgins, Mass.	Ramsay
Bulwinkle	Hildebrandt	Reece
Cannon, Mo.	Hobbs	Reilly
Cannon, Wis.	Hoffman	Rayburn
Casey	Hook	Robiston, Ky.
Celler	Jenckes, Ind.	Russell
Chapman	Keller	Ryan
Claiborne	Kennedy, Md.	Sadowski
Clark, Idaho	Kerr	Sanders, La.
Clark, N. C.	Kocialkowski	Sandlin
Cochran	Koppelmann	Schuetz
Cox	Lamneck	Schulte
Crowe	Larrabee	Scrugham
Dear	Lemke	Shannon
DeRouen	Lesinski	Short
Dickstein	Lloyd	[9669] Sisson
Dirksen	Lord	Steagall
Doutrich	McClellan	Sumners, Tex.
Duffey, Ohio	McLean	Sweeney
Eckert	Marshall	Taylor, Tenn.
Evans	Montet	Tolan
Farley	Norton	Underwood
Fish	O'Day	Werner
Frey	Oliver	Wilson, La.
Gasque	O'Neal	Wood
Gassaway		

The SPEAKER. Three hundred and forty-three Members have answered to their names. A quorum is present.

Mr. TAYLOR of Colorado. Mr. Speaker, I move that further proceedings under the call be dispensed with.

The motion was agreed to.

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[9676] NATIONAL LABOR RELATIONS BOARD

Mr. O'CONNOR. Mr. Speaker, I yield 30 minutes to the gentleman from Pennsylvania [Mr. RANSLEY].

Mr. Speaker, before I proceed to attempt to discuss House Resolution 263, providing for the consideration of the labor-disputes bill, I want to heartily join in the felicitations which have been expressed to the distinguished gentleman from Colorado, our beloved acting majority leader [Mr. TAYLOR] upon the occasion of his seventy-seventh birthday. [Applause.]

He is in much better voice today than I am. I only hope that some of us who may be a generation or more younger than he, when we reach that ripe old age of 77, we shall have had such a distinguished career as he and that we shall be as alert, physically and mentally, as he is today. I congratulate him. [Applause.]

Mr. Speaker, House Resolution 263 provides for the consideration of the labor-disputes bill, commonly and sometimes profanely referred to as the "Wagner-Connery bill", named after the distinguished junior Senator from my State and that beloved champion of labor, the distinguished gentleman from Massachusetts.

I assure you that this rule is not a gag rule. I have been amused at the constant misguided references to gag rules. Only yesterday I read in a Washington newspaper that the A. A. A. amendments bill was being "jammed through the House under a gag rule."

Of course, nothing could be more ridiculous. The A. A. A. and the Wagner-Connery bill would never be considered in this House without a special rule. Rather than the rule for the consideration of the A. A. A. amendments being a gag rule, it was six times more liberal than the usual and ordinary procedure of this House. This rule for the consideration of the Connery bill is three times as liberal as the ordinary procedure of the House. If that is gagging it is at least a pleasant dose. Because if either of these bills were brought up under the ordinary rules of the House there would be only 1 hour's debate, whereas in the triple A bill we provided for 6 hours' debate, and for this bill 3 hours' debate, with every opportunity for amendment and no attempt to restrict the prerogatives of any Member.

For months I have been overwhelmed by countless thousands of letters from all over the country in reference to this bill, most of them from employers apparently alarmed at the prospects of its passage. I think the gentleman from Massachusetts and other supporters of the measure, who know the situation as to this bill, can state to the country, if it really concerns what I had to do with the making of the rule for the consideration of this bill possible.

Mr. COX. Will the gentleman yield?

Mr. O'CONNOR. I yield.

Mr. COX. I know that the gentleman has been anxious to get a rule for the consideration of this bill, and any assertion that he has been blocking it is untrue.

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Mr. O'CONNOR. I have been striving for weeks to get this rule reported from the committee so that the House [9677] might consider it. From the beginning, despite any statements of irresponsible labor leaders to the contrary, I have been wholeheartedly for the bill.

Mr. CONNERY. Mr. Speaker, will the gentleman yield?

Mr. O'CONNOR. Yes.

Mr. CONNERY. I know the situation and I am entirely familiar with it. I am glad to tell the country that the gentleman from New York [Mr. O'CONNOR] has done everything in his power to bring out a rule on this bill.

Mr. O'CONNOR. Oh, I am not concerned about scandalous misstatements from irresponsible sources. I have gone through many years of it and I can still take it a little longer.

Mr. HOEPPEL. And, Mr. Speaker, the gentleman may be unjustly accused in reference to the Spanish-American veterans' bill. I know the gentleman was heartily in favor of that bill, and I should like that to be shown in the RECORD.

Mr. O'CONNOR. Oh, I do not care about that either. Everyone who knows what goes on here knows what I did to make the passage of that bill possible.

As I understand it, this labor-disputes bill becomes necessary chiefly because of the Supreme Court decision which disposed of the main part of the N. R. A., including section 7 (a), which provided for the settlement of labor disputes. As I read the bill and study it, what it does principally is to provide for collective bargaining among employees. Employers, through their chambers of commerce and their trade associations, have always had the privilege of collective bargaining; and if N. R. A., if the new deal, has any one outstanding feature, it is the encouragement of collective bargaining among business men, manufacturers, and producers. If collective bargaining under the new deal should fail, the whole new deal would fail. If that right of collective bargaining is accorded to employers, why should it not be granted to employees? That is the spirit of this bill—to give to employees the same right to act in concert that has been granted to employers. Everyone knows that the individual, by himself, is at the mercy of the heartless employers.

What does the bill do? Employees have had the right of collective bargaining, by decisions of the court, since 1842, and this bill merely assures them that they may do that without interference from the employer in their self-organization. Is there anything wrong in that? Does anybody object to that? Of course, some employers do.

All the bill says to the employer is, in effect, "If your employees want to organize, as they have had a right to do for over 90 years, you keep your hands off and let them organize. You bargain collectively. Let them bargain collectively by representatives of their own choosing. They do not choose your representatives. Why should you choose theirs?" Is there anything wrong with that? The employer bargains collectively with representatives of his own choice. He sits in his trade association. He sat in the code meetings. Did he have outside representatives selected by employees or anyone else? No; he had representatives of his own choosing; and all that labor asks is that when they bargain with their employers, they have representatives of their own choosing. Who can complain of that?

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This bill is nothing new. The National Industrial Recovery Act contained substantially the spirit of the bill. The N. R. A. provided:

Employees shall have the right to organize and bargain collectively—

Is there anything wrong with that?—

through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers.

Is there anything wrong about that? We merely enunciate an equality of bargaining power.

This bill in its spirit is substantially a reenactment of the provisions of the National Industrial Recovery Act, which this Congress deliberately put into that bill. In the last Congress we gave the railroad employees that exact right—to be free from interference from the employers. We gave them the right to bargain collectively without any interference from the railroad executives. Is there any reason why labor generally should not have the same right as the railroad workers?

Of course, many of the employers would like to keep their self-controlled company unions. Why, the very name "union" is a misnomer. It is a stopgap against any union.

I have heard there have been some objections to the provision that labor, through its representatives, should be entitled to go into the courts although the labor union and although the representatives of the workers are not parties to the suit. What is wrong with that? Why should not labor have the chance to go in and argue collectively the rights of labor in any court action where there is a labor dispute? Why should they not have their own attorneys in the suit?

Mr. Speaker, it is my conviction that there is a lot of undue alarm about this bill among employers and as to what its results will be. It has been my experience in the Legislature of New York, and in this body, that employers, falsely importuned by their lobbyists, by their paid representatives who want to keep their jobs, are deliberately frightened at any suggestion of bettering the conditions of labor. I have a letter here from a man in New York, the same man who fought the workmen's compensation law, the same man who fought improving the hours of labor for women and children in industry, the same man who fought the factory laws, and he is still fighting every labor measure. He holds a job. He is paid to do it and to frighten employees.

It has invariably happened that after those labor laws were put into effect, the employer and business would not be without them. I predict that result as to this bill after it has had time to operate. The employers are unduly alarmed. If there is any injustice in the bill it will be corrected. I have never seen an injustice last very long. Listen to what this paid shouter for the Associated Industries of New York says as to the attitude of the employers of his association toward their Government:

All employers and all independent self-respecting employees will refuse to submit to the governmental domination which this bill seeks to thrust upon them.

Is this a defiance of law? Of course the employers of my State did not authorize nor do they subscribe to any such defiant attitude toward our Government.

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This paid lobbyist would have us believe that the employers whom he falsely represents are serving notice that if we pass the bill they will not submit to it. Of course, they will attack it in the courts. That is their right. Of course, they will put every obstacle in the way of it as they always have done when there has been an attempt to better the condition of wages and of employment. As to that they must answer to themselves and their employees.

There is a lot of talk nowadays about the distribution or the redistribution of wealth. Why, Mr. Speaker, the way to distribute wealth in this country, if it should be better distributed, is to increase wages and individual income. [Applause.]

So I am hopeful that when this bill has been thoroughly considered under the 3 hours' general debate and under the 5-minute rule, many of the alarms, many of these fears which have been set up as straw men by paid representatives of employers will be dissipated, and that this House will come to the conclusion that the enactment of this bill is for the benefit not only of labor, but for the benefit of the employer and every man, woman, and child in this great country of ours. [Applause.]

Mr. RANSLEY. Mr. Speaker, I yield 10 minutes to the gentleman from New Jersey [Mr. LEHLBACH].

Mr. LEHLBACH. Mr. Speaker, I have not opposed the bringing in and adoption of any rule to make in order a major proposition of legislation desired by the administration and put on the legislative program of the leadership of the House. I think they are entitled to have their program of legislation, which the administration desires and which the majority of this House desire to further. I think they are entitled to have that legislation considered. Here **[9678]** tofore I have only opposed rules when they contained limitations on the offering of amendments, or otherwise deprived the membership of the House of free and unfettered deliberation under the general rules of the subject matter of the bills proposed. But I cannot vote for, and I must needs oppose, the reporting of this rule and its adoption.

Insofar as the subject matter of this legislation is concerned and its fundamental principles, I am in sympathy with it. I recognize the right of labor to collectively bargain. I am in hearty sympathy with everything that is economically possible to raise wages and better the living conditions of those who work in this country. I believe it is the destiny of this country that its standards of living for the masses of the people and for everybody be continually raised, and I am for anything that will bring that about. So it is not the bill as such that I am opposing; but recently the Constitution of the United States was intepreted by the Supreme Court in a decision that was unanimous, and which opinion I have before me.

I wish to remind the Membership of this House of some of the things that the Constitution contains. I quote from the opinion subscribed to by the entire membership of the Supreme Court. The Supreme Court laid down the proposition that the general police powers to be exercised in this country belong to the States, and that insofar as the exercise by the Federal Government of police powers is concerned it is limited to regulation of interstate and foreign commerce. If the exercise of power by the Federal Government is not needed for the

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regulation of commerce, then the exercise of that power has been prohibited by the Constitution to the Federal Government.

The Supreme Court has said, with respect to activities that affect interstate commerce, this:

In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they "affect" interstate commerce, there is a necessary and well-established distinction between direct and indirect effects.

It cited the Coronado and the Bedford Coal Co. against Stonecutters of America cases and said that where the Supreme Court, under the Sherman Act, determined that under the Constitution the Federal Government had the right to interfere with intrastate activities, it was because the Court found as a fact that there existed a conspiracy not to do something that might affect interstate commerce, but a conspiracy to stop interstate commerce directly. It is upon the finding of that fact that the Court found that the cases came within Federal jurisdiction. It must be a direct and not an indirect effect, says the Supreme Court.

Mr. CONNERY. Will the gentleman yield?

Mr. LEHLBACH. I yield.

Mr. CONNERY. Chief Justice Taft, in the Coronado case, said:

If Congress deems certain practices, though really not a part of interstate commerce, likely to obstruct, restrain, or burden it, it has the power to subject them to national supervision or restraint.

That is the purpose of this bill.

Mr. LEHLBACH. The Supreme Court in its decision said that these intrastate activities which interfered with interstate commerce must not only substantially interfere with commerce, but must have interference as a specific purpose. That is what the Supreme Court in the recent decision said.

It goes on:

But where the effect of intrastate transactions upon interstate commerce is merely indirect such transactions remain within the domain of State power. If the commerce clause were construed to reach all interprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufference of the Federal Government.

Furthermore, this is what they said in answer to the question raised by the gentleman from Massachusetts:

The distinction between direct and indirect effects has been clearly recognized in the application of the Antitrust Act. Where a combination or conspiracy is formed with the intent to restrain interstate commerce or to monopolize any part of it the violation of the statute is clear.—

Citing the Coronado case—

but where that intent is absent and the objectives are limited to intrastate activities, the fact that there may be an indirect effect upon interstate commerce does not subject the parties to the Federal statute, notwithstanding its broad provisions.

Furthermore, in speaking of the Industrial Association against United States case, it quotes from that opinion as follows:

The alleged conspiracy and acts here complained of spent their intended and direct force upon a local situation—for building is as essentially local as mining, manufacturing, or growing crops—and if, by resulting diminution of the com-

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mercial demand, interstate trade was curtailed, either generally or in specific instances, that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act.

And the Supreme Court goes on further and says that while these decisions were upon the point whether the Antitrust Act was applicable to the cases brought before it, it goes on to say as follows:

While these decisions related to the application of the Federal statute and not to its constitutional validity, the distinction between direct and indirect effects of intrastate State transactions upon interstate commerce must be recognized as a fundamental one essential to the existence of our constitutional system.

[Here the gavel fell.]

Mr. RANSLEY. Mr. Speaker, I yield 5 additional minutes to the gentleman from New Jersey.

Mr. LEHLBACH. These same rules that were applied in the antitrust cases are applicable in determining the constitutionality of a statute.

The Supreme Court sums up its opinion on this subject in the following language:

We are of opinion that the attempt, through the provisions of the code, to fix the hours and wages of employees of defendants in their intrastate business was not a valid exercise of the Federal power.

And, as before mentioned, the Court specified as such intrastate business, building, mining, manufacturing, or growing crops.

What does the bill before us propose to do? This bill proposes to set up certain prohibitions against employers. Section 8 states that it shall be an unfair labor practice for an employer, any employer, to do one of five things heretofore not illegal. An employer is defined as anyone who pays money for the services of another, and excludes simply the Government of the United States, a State, or political subdivision thereof, any person subject to the Railway Labor Act, any labor organization or any officer or agent of a labor organization. Outside of these groups the pending bill includes everybody employing labor for any purpose throughout the United States, and is manifestly unconstitutional.

The bill provides procedure for the enforcement and restraint of indulgence in these prohibited labor practices. So we have here a situation where a proposed law is not doubtful with respect to its constitutionality, where there can be no reasonable difference of opinion, where it is not a matter of judgment as to whether it is in violation of the Constitution, because the interpreter of the Constitution, set up by that instrument, has spoken in unequivocal language. We have, therefore, the remarkable situation of the legislative and executive branches deliberately and willfully engaged in enacting legislation to vest powers in the administrative branch which powers they know the Constitution says are not within the jurisdiction of the Federal Government. It is clear usurpation. It is a determination by the Federal Government to govern in matters which the Constitution states are not within the jurisdiction of the Federal Government, matters which the Constitution recites are reserved to the States and the peoples thereof. It is a direct exercise of governmental functions by the Federal Government by main strength and in defiance of the Constitution.

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I cannot vote for any such rule, I cannot vote for any such bill. [Applause.]

Mr. Speaker, I yield back the balance of my time.

[9679] Mr. SABATH. Mr. Speaker, I yield 5 minutes to the gentleman from Georgia [Mr. Cox].

Mr. Cox. Mr. Speaker, I had not intended, until a few minutes ago, to have anything whatever to say about the Wagner-Connery bill consideration of which the pending rule is intended to make in order. I recognize, of course, that the bill raises an issue that must at some time be fought out, and I think it may as well be now as any other time. I have not, therefore, opposed the reporting of the rule by the Rules Committee, and do not and will not oppose the adoption of the rule in the House.

I have not had time to digest the bill as fully as I should like, but it must be apparent to everyone who has read it that it carries upon its face the most terrible threat—and I speak deliberately and advisedly—to our dual form of government that has thus far arisen. In this respect it is far more terrible than was the National Recovery Act. It is not what appears upon the face of the bill that disturbs me, it is the intent and purpose carried by the measure which the language used is intended to conceal.

The purpose of the measure, as all honest minds must confess, is to circumvent the effect of the recent ruling of the Supreme Court in the Schechter case. It is intended by this measure through the use of the commerce clause of the Constitution to sap and undermine that great document to the extent of ultimately striking down and destroying completely all State sovereignty. Here the attempt is made through the use of the commerce clause to extend Federal control to the point of production and distribution, which the courts for more than a hundred years have uniformly held to be domestic questions.

If it be not the purpose of the bill to circumvent and to nullify the pronouncements of the Court in the case to which I have referred, then there should be no objection to amending the measure to make it clear that there is no purpose to push Federal control through legislative definitions or otherwise beyond the point fixed by the Court in the Schechter case which defines the limit of congressional power. There is the test of what is here sought to be done; for, of course, no one objects to collective bargaining. I am for insuring to and protecting labor in the free and unrestricted exercise of all their constitutional rights. [Applause.]

[Here the gavel fell.]

Mr. RANSLEY. Mr. Speaker, I yield 10 minutes to the gentleman from New Jersey [Mr. Eaton].

Mr. EATON. Mr. Speaker, I was profoundly impressed by the very able argument to which we have just listened, offered by the gentleman from Georgia [Mr. Cox].

I am not a lawyer; in fact, the number of phases of human existence about which I do not know is very large, but I approach this and every other problem from the point of view of the well-being of the man himself, and I find myself deeply disturbed by and strongly opposed both to this rule and to the legislation which it introduces to the House.

Eleven years ago last March I had the honor of addressing this House on the subject of our American economic revolution, and at

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that time I laid down certain principles by which I interpreted history. To those principles, in which I believe more strongly than ever, I appeal at this time for your consideration.

The end of the social process, as I see it unfolding down through the long weary centuries, is that men may be free. For a thousand years men have fought to be free to think, to be free to worship, to be free to govern themselves. They have won in theory at least those areas of freedom which have to do with intellectual, moral, and political rights.

Today throughout the civilized world the attention of every class in every community is turned to one new objective, namely, that the masses of men shall achieve the same freedom economically that in days gone by they had achieved in the realm of the mind, the spirit, and the political structure. In accomplishing this great objective, which I believe in with all my heart and to which I have devoted the best years of my life, we have a choice between two great instrumentalities. One is the American instrument of private enterprise developed by free American citizens under the Constitution and Government of the United States. The other is the instrumentality adopted in various countries of Europe, in which the Government is everything. It is the monster of control, and under that control the individual lives his life, whether he be employer or employee, shackled and bound by authority forced upon him from above and not created by his own choice. As between these two principles of life I take my stand on and for the American principle, and I am willing to go down with that principle even if I did not get one vote back home. I will stand for that American concept of life to the last ditch at any cost to myself or to my party. [Applause.]

Mr. SPEAKER. I believe in organized labor. I have voted and fought for almost every principle and every policy introduced in this House in 10 years that had as its purpose the advancement of the workingmen, not because I wanted their votes, although sometimes I needed them. I will be honest with myself and my people even if I am in politics. I would rather go down fighting for the principles that have made this Nation great than to be guaranteed a safe election for the rest of my natural life. I believe those American principles are at stake in this legislation today.

The American instrument for the distribution of wealth is not this body and it is not the White House. It is organized industry, composed of the employer and the employee working together as partners in the greatest material social service the world contains.

Mr. WHITE. I think sometimes industry may be over-organized.

Mr. EATON. I think that is a valuable suggestion. In the old days the individual was the chief instrument of industry. You did not need organized labor. But when we created by law a great, impersonal giant, known as a corporation, it became the duty of Government to follow that legislative creation by proper legal regulation. The day that you introduced that powerful impersonal instrument on the side of the employer, it became necessary for the employees to organize in a mass form, otherwise the individual worker would have had about as much weight as a fly on the wheel of a locomotive. So I have been for organized labor, and I want to see it continue, but I want to see

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organized labor and organized industry work together as a team in social service, not under the whip of bureaucratic control, but under personal responsibility and in accordance with the fundamental ideals of our country. [Applause.]

Can that be done? I may be an old fogy in my views about that matter, but I have been in the industry of this country, and in the closest intimacy with these problems for the past 20 years, and I do not believe that full and free and friendly cooperation between employer and employee is an idle dream. May I give you two illustrations, and I am sorry that they have to do with the dead. When you go to Cleveland, go out to the Lake View Cemetery, and I hope you will not go there as a patron, but rather as a visitor. You will see a monument at the entrance crowned by the magnificent figure of a man, Henry Chisholm. Many years ago a young Scotchman, who was a carpenter, and his wife were put off a sailing vessel on the wharf in Cleveland. They had all their worldly goods in a box and she sat on the box while he went up town to get a room. He came back and both of them took hold of the box and carried it up to their room. When that man died at the end of a wonderful career in Cleveland he was followed to his grave in the cemetery by 6,000 of his employees and they erected this monument. On it they put this statement:

Erected by 6,000 employees and friends in memory of Henry Chisholm, Christian, philanthropist, and everybody's friend. Born in Lochgelly, Scotland, April 27, 1822. Died in Cleveland, Ohio, May 9, 1881.

That is the essence of the relationship that I believe should exist between employer and employee in every organized industry. I believe it is possible to achieve that normal human relationship if we may have some kind of moral sense and intellectual understanding of our problems, which problems we can never solve by legislation such as is being proposed here today.

[9680] Here is the other instance. The employees of Richman Bros., manufacturers of clothing, have hung in the lobby of their East Fifty-fifth Street factory, Cleveland, Ohio, a life-size portrait of their friend and employer, Henry C. Richman, and a bronze tablet, which reads as follows and which does not read very much like the legislation which we are considering here today.

The Richman institution is a successful firm of Jewish people who have been for many years in the clothing business. They are not chiselers, they are not doing a sweatshop business. They are fine American citizens who stand for the very best in all their relations with their employees. This is what the employees put on the tablet:

The memory of the righteous shall be a blessing. This memorial tablet has been erected by the employees of Richman Bros. Co. in loving tribute to Henry C. Richman. June 26, 1876–February 16, 1934. Coworker, friend, benefactor. His interest in the personal welfare of the men and women of "the Richman family" was constant, devoted, and inspiring. He was a gentleman of spirit, generous of heart, strong in integrity, and a friend of us all. His memory will live forever in the grateful hearts of all who knew him, and, knowing him, loved and respected him.

Mr. GRAY of Pennsylvania. Will the gentleman yield?

Mr. EATON. I yield to the gentleman from Pennsylvania.

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Mr. GRAY of Pennsylvania. May I ask the gentleman if he thinks there should be any laws against homicide because there are decent people in the country?

Mr. EATON. I would not expect a question of that magnitude to be asked except on that side of the aisle.

This resolution describes the legislation under consideration as—

A bill to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

As I read the bill, the exact opposite of this description would be more in accord with the truth. It destroys equality of bargaining power between employer and employee. And it will increase enormously the causes of labor disputes. It will not cure the disease. It will aggravate and perpetuate the disease.

This legislation strikes a fatal blow at organized labor as we have known it in America. For it plucks the labor union out of the plane of free, self-governing American institutions and places it under the supreme control and domination of a political bureaucracy in Washington.

Under this bill the labor union ceases to function as an economic instrumentality and becomes a mere cog in the vast political bureaucracy now being built up in Washington for the purpose of bringing all American life under Government control and management.

It takes from employers and employees alike their constitutional right to develop their mutual relationships under local conditions and free from bureaucratic political dictation. And it denies the great majority of American workers the right to work under conditions and leaderships of their own choosing.

This and all similar legislation rests upon the absurd proposition that all businessmen are dishonest and unfair and all employees are incapable of self-determination or self-government. It places the relation of employer and employee upon a permanent and unalterable war basis. It rests upon the false assumption that the interests of employer and employee are by their intrinsic nature absolutely irreconcilable. And it puts the employer in the criminal class, subject to fine and imprisonment for a list of new crimes fastened upon him under legal processes as unjust and unfair as they will certainly turn out to be unconstitutional.

Believing as I do that organized industry is now the chief instrument of civilization, I see small hope for our social future unless employer and employee quit fighting each other and join forces to meet the challenge that confronts them. Under our American system there is only one way to justly distribute wealth, and that is by high wages made possible by high production at low unit cost. Wages and profits must be paid out of production. There is no other source from which they can be derived. And high wages cannot come out of an industry conducted as an armed camp with the vultures of bureaucracy darkening the sky.

The problem of human relationships in industry can never be solved by law, and especially by class legislation which seeks to enthrone one class while it enslaves another. The need of the hour is not more law and more bureaucratic dictators. Our need is an

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awakened sense of moral obligation among employers and employees and the people generally, which will make fair industrial cooperation possible and leave us all free to act as self-governing, self-respecting American citizens, with faith in ourselves and in each other.

Mr. O'CONNOR. Mr. Speaker, I yield 4 minutes to the gentleman from Illinois [Mr. SABATH].

Mr. SABATH. Mr. Speaker, if a majority of employers would be as fair to their employees as those who have been mentioned by the gentleman from New Jersey [Mr. EATON], there would be no need for this pending legislation; but, unfortunately, such is not the case. In many instances many honest employers are being misled by propaganda on the part of industry.

I am satisfied that the employers described by the gentleman will not be found among those objecting to this legislation, but they will give it their wholehearted support and cooperation.

I have in my hand more than 400 letters and telegrams from men protesting against the passage of the bill, and a majority of these men, Mr. Speaker, draw from $50,000 to $100,000 a year in salary as president or as other officers of these corporations. Moreover, many of them draw from $50,000 to $250,000 a year in bonuses. These are the men who are fearful that something will be done that will be helpful and beneficial to the deserving workers of this country.

Mr. Speaker, I feel that if the men who have either wired or written to me had been well informed on this proposed legislation they would not have sent these telegrams and letters; but, unfortunately, the officers of these various manufactories and large corporations, with the organizations and lobbies which they employ, as the gentleman from New York [Mr. O'CONNOR] has stated, to keep their fat jobs, instigate this propaganda. This should be condemned and, for one, I shall continue to resent such activities of these men who are responsible for the thousands of telegrams and letters with which they are endeavoring to influence and browbeat us while we are in the performance of our duties.

As to the constitutionality of this measure, during the 29 years I have been here, every time we have had a bill in the interest of the deserving labor, I have heard the learned lawyers of the Nation raise the question of constitutionality. When I introduced my first bill on workmen's compensation 29 years ago, what a hue and cry was raised against it. The question of its constitutionality was raised then, and, as I have stated, the same question has been raised in every instance with respect to legislation considered on the floor of this House in the interest of the masses and the laboring people of the country.

All this legislation contemplates is the setting up of a labor-relations board that would be helpful in effecting adjustments in disputes among employers and employees. It has been stated, and I know it will be used again on the floor, that the leaders of the American Federation of Labor are dictating this legislation. Some gentlemen resent and give as a reason for opposing this bill the statements of Mr. Green, the president of the American Federation of Labor. Anyway, if this legislation is enacted, it would benefit only about 3,000,000 of the 30,000,000 workers of our country.

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Let me say very earnestly to the opponents who are using that as a pretext for opposing this legislation that were it not for the work of the American Federation of Labor, we would still have in this country our workers enslaved 10, 12, and even 14 hours a day at the starvation wage of a dollar a day. The present high status of the workers of America is due to the age-long struggle and accomplishments of, first, the Knights of Labor, and, later, the conservative American Federation of Labor.

[9681] The American Federation of Labor has for many years been a benefactor not only of the deserving workers of America but to America herself. That splendid organization, more than any other, has been instrumental in the improvement of living conditions and wages of the labor of this Nation.

If employers and industries have unrestrained right to organize, why should not the same privilege be accorded to the real producers of wealth? Attacks against that splendid organization, the American Federation of Labor, are unfair, unjust, and in many cases contemptible.

Anybody who is fair and familiar with the existing condition of labor these distressful times will, if he follows the dictates of his heart and conscience not vote against this generally helpful proposed legislation.

[Here the gavel fell.]

Mr. RANSLEY. Mr. Speaker, I yield the balance of the time on this side to the gentleman from Ohio [Mr. HOLLISTER].

Mr. HOLLISTER. Mr. Speaker, I am opposed to this bill because it purports to do what it cannot do, and we are therefore grossly deceiving many people who are looking to it for help and protection. This bill purports to assure to workers generally freedom from any interference, restraint, or coercion in the forming or joining of labor organizations and in collective bargaining. If the bill actually goes this far it is manifestly unconstitutional, while if it is limited in its operation to those few isolated cases where Congress may perhaps still legislate with respect to such matters without violating the Constitution, it does not give what it purports to give, or what its sponsors claim for it.

There is some question whether even on the narrowest construction the whole bill is not unconstitutional in the light of the decision of the majority of the Supreme Court a few months ago on the Railway Retirement Act. In that case the court said:

> The purpose of the law is not safety, but to give social security to a limited class. Hence, it is not a necessary or appropriate rule or regulation affecting the due fulfillment of the railways' duty to serve the country in interstate transportation.

The present bill makes a great deal out of the alleged advantage to interstate commerce in the setting up of machinery for collective bargaining. The court might hold that such machinery does not increase the efficiency of interstate commerce and therefore Congress may not legislate with respect to it, irrespective of the nature of the company involved in the labor dispute, i. e., whether it is actually engaged in interstate commerce or not.

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It is true that the Supreme Court in the case of *Texas & New Orleans Railroad Co.* v. *Brotherhood* (281 U. S. 548) upheld the Railway Labor Act of 1926, in a suit by a labor union to restrain the railroad from interfering with the right of its employees to organize and the designation of representatives for bargaining. The Court in that case, however, distinguished the principle involved from the rules laid down in *Adair* v. *United States* (208 U. S. 161) and *Coppage* v. *Kansas* (236 U. S. 1), which held unconstitutional statutes directed toward regulating the rights of railroads to employ and discharge employees at will. The Texas case is, therefore, of narrow application and is not necessarily authority for the principle that Congress may legislate on all matters covered in the present bill, if the company involved is engaged in interstate commerce or in transactions so affecting interstate commerce as to be as to some matters under the control of Congress.

Another aspect of the case which should be given at least passing consideration is the question of discrimination. If relations between employers and employees are to be regulated, a serious constitutional question is raised if employers are forbidden to do certain things and employees are not so forbidden. It is possible that the Supreme Court might consider this an arbitrary, unreasonable, or capricious use of power by Congress and therefore violative of the due-process clause of the Constitution.

But even if neither of these two possible constitutional objections to the bill are involved, the effect of its operation is so narrow that only in isolated cases of labor disputes could it be invoked. The great mass of labor disputes in the country are, of course, in manufacturing, in the production of raw materials, or in the supplying of services. None of these, outside of the communications industry or the transportation industry, could possibly come under the terms of the act. The Supreme Court has repeatedly held that the business of manufacturing, the business of mining, and the business of supplying intrastate services cannot be held to be in interstate commerce unless the effect on interstate commerce is direct and substantial. The Schechter case, decided on May 27, is, of course, the most recent enunciation of this doctrine. The Supreme Court could have decided that case solely on the question of delegation of authority, but went out of its way to discuss the interstate commerce question, realizing, undoubtedly, that it was well to warn Congress of the limits beyond which it could not go.

The Court asked in its opinion: "Did the defendant's transactions directly 'affect' interstate commerce so as to be subject to Federal regulation?" and then answered its own question as follows:

> In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they "affect" interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. * * * But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people, and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government.

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When proponents of the bill before us are asked for any evidence that Congress has the power to control labor relations in ordinary business, they customarily point to the language of Chief Justice Taft in the *First Coronado case* (259 U. S. 344), as follows:

> If Congress deems certain recurring practices, although not really part of interstate commerce, likely to obstruct, restrain, or burden it, it has power to subject them to national supervision or restraint.

But in the Schechter case the Supreme Court specifically referred to the Coronado cases and pointed out that in those cases there was a combination or conspiracy with the intent of restraining interstate commerce, and that therefore the Antitrust Act was violated. The Court continued:

> But where that intent is absent and the objectives are limited to intrastate activities, the fact that there may be an indirect effect upon interstate commerce does not subject the parties to the Federal statute notwithstanding its broad provisions.

The use of Chief Justice Taft's words in the Coronado case as authority for legislation like the present bill is an example of what Justice Sutherland warned against in the Humphreys case, decided on May 27, last (*Rathbun, Executor,* v. *The United States*), when he quoted Chief Justice Marshall in *Cohens* v. *Virginia* (6 Wheat. 264), as follows:

> It is a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case they may be respected but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent. Other principles may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

Proponents of this legislation also cite *Chicago Board of Trade* v. *Olsen* (262 U. S. 1), and similar cases, as authority for the right of Congress to pass such legislation. But the peculiar authority of that line of cases is also distinguished in the Schechter case, where the court says:

> Hence decisions which deal with a stream of interstate commerce—where goods come to rest within a State temporarily, and are later to go forward in interstate commerce—and with the regulations or transactions involved in that practical continuity of movement, are not applicable here.

As a matter of fact this legislation shows a callous disregard of the repeated warnings which the Supreme Court **[9682]** has given. It is an outrage to labor to promise what the sponsors of this bill have promised only to find within a year or two, when labor disputes where this act will be invoked finally reach the court of last resort, that Congress went beyond its powers in attempting to include such disputes in this legislation. It is inconceivable that the sponsors of this bill have had proper legal advice, for I am sure that they would not knowingly so mislead their followers.

Is it not wiser to draft legislation on sound legal principles, legislation which can be upheld, rather than arbitrarily pass a bill which has no chance of ultimate validity? The whole tendency of this legislation will be to foment labor trouble, and the heartburnings and disappointments which will ensue when it is found unworkable cannot help but

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react severely on the whole industrial situation. If we pass this act we are selling labor a gold brick.

What is most desired is friendly relations between capital and labor. Proper wages, hours, and working conditions on the one side, and an ability to earn a reasonable return on the investment of the other. Legislation of this kind, far from accomplishing that desired result, will result only in estranging still further the relations between labor and the employer. The utter futility of the effort to improve conditions by such unsound measures as this should be manifest.

Mr. CONNERY. Mr. Speaker, will the gentleman yield?

Mr. HOLLISTER. I yield.

Mr. CONNERY. The Supreme Court has said time and again, in the Coronado case and in the Stonecutters case, that anything that affects interstate commerce, as far as a labor dispute is concerned, which burdens or obstructs interstate commerce, can be regulated under the commerce clause of the Constitution.

Mr. HOLLISTER. The gentleman is entirely incorrect. The gentleman has quoted the Coronado case and that case is generally quoted by those who sponsor legislation of this sort. The gentleman is thinking of the words of Mr. Chief Justice Taft in that case where he used some general language in discussing solely the question of a conspiracy to stop the flow of interstate commerce, and which has been repeatedly held had nothing whatever to do with anything but the particular case of conspiracy. Both the Coronado cases and the so-called "Stonecutters case," to which the gentleman has referred, dealt with conspiracies and combinations in restraint of trade. If the gentleman will look at the decision of Mr. Justice Sutherland in the Humphreys case, he will see that the Justice pointed out how unwise it is to pick out a part of a decision which is obiter dicta, and has specific reference only to the particular case, and then apply such general remarks to other matters of legislation. [Applause.]

[Here the gavel fell.]

Mr. O'CONNOR. Mr. Speaker, I yield 5 minutes to the gentleman from Indiana [Mr. GRISWOLD].

Mr. GRISWOLD. Mr. Speaker, it seems that we are being confused over the real object of the bill. We are taking a lot of trouble to find where the act might be unconstitutional. The whole object of the bill, the only object, and the object we should not lose sight of is that in this concentrated business of collective bargaining on the part of business we should also have collective bargaining on the part of the employee.

It is the old war of labor over again.

My correspondence files are full of letters saying that by this bill you will turn over industry to the employees, that by this bill the American Federation of Labor or some labor organization will control industry. Under this bill it is impossible for any labor organization to control anything except the selection of its representatives.

There is not a thing in this bill to provide control, nothing in this act provides for it. Under this bill labor has the right to go to the door of the employer and say, "We are ready to set around the table and argue this matter out and reason it out with you. If we can reach an adjustment, all well and good; if we cannot, we go back to the old system of dog eat dog, which we have had before."

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This bill does not adjust labor disputes; it puts both sides in a position where they can adjust them.

There is much talk about the agitators; and some of you gentlemen who are interested in industry, if you think, you would find that the best way you have of eliminating the agitator and the fighter of your labor organization is through this bill.

The agitator and the fighter was brought into the labor organizations because of one thing—and that is that your industrial leaders would not recognize the right of collective bargaining. Your industrial leaders said, "We will not recognize that right." Then came the labor agitator and the strikes. In the last 6 months of 1934, according to the records of the Labor Relations Board, 74 percent of all strikes owed their origin to a demand for collective bargaining.

Thirty-five years ago that was the type of leader you had. Today you have the reasoning type, because many have recognized the right of collective bargaining. The standard labor organizations have eliminated the agitator, and today they are sitting around the table.

Mr. TAYLOR of Tennessee. Will the gentleman yield?

Mr. GRISWOLD. I yield.

Mr. TAYLOR of Tennessee. Is there anything in this bill to prevent an operator from closing his plant?

Mr. GRISWOLD. There is nothing in the bill to keep an operator from closing his plant. There is nothing in the bill that says you shall reach an agreement—nothing of that sort. It simply provides that labor may bargain collectively. The bill does not fix hours, wages, or working conditions, nor does it allow any Government agency to do so. The bill does not require any employee to join any labor organization. Nothing in the bill compels any employer to make any agreement about anything pertaining to wages, hours, or working conditions in any plant any place.

The bill does provide the manner and method by which employees may select their representatives for the purpose of collective bargaining. Beyond this the bill does not go.

Gentlemen here say they favor the principle of collective bargaining, but they oppose the only means by which collective bargaining can be established. It is like saying, "We believe you should be free, but try and get free."

Mr. FOCHT. Mr. Speaker, will the gentleman yield?

Mr. GRISWOLD. Yes.

Mr. FOCHT. We will agree with that. We all have been for labor for all these years, but we find in this bill an inhibition on the employer to have any such operation as a lock-out, while we find in the winding up of the bill there is nothing to interfere with strikes. Why cannot we get them together and have no lock-outs and no strikes? Otherwise you will have nothing but strikes.

Mr. GRISWOLD. I would be pleased if the gentleman could in some way fix this bill so that we could reach the millennium, a system of brotherhood, so that we would have neither lock-outs nor strikes

Mr. FOCHT. Why, they have been claiming the millennium on the gentleman's side all of these weeks and months, and by this time you ought to have it worked out.

Mr. GRISWOLD. I suggest to the gentleman that if we have 12 years to work it out, as the gentleman's side did, we will certainly

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make a better success of it than his side has. [Laughter and applause.]

To get back to the bill. The only inhibition against the employer is that he shall not dominate an organization of his employees. He cannot rent a hall or make a contribution to a union. And this applies whether the union be an American Federation union, a company union, a fraternal brotherhood of employees, or a mugwump union. He cannot buy candy for company-union members nor at his own expense throw a dance for the daughters, and in return expect to get a lengthening of hours or reduction of pay.

And last, but important, domestic and farm labor is specifically exempt.

Mr. CONNERY. Mr. Speaker, I yield the remainder of my time to the gentleman from Indiana [Mr. GREENWOOD].

[9683] Mr. GREENWOOD. Mr. Speaker, I trust this rule will be adopted and that this bill will become legislation. It is one of the principal measures of the administration program. It recognizes the right of labor to form unions and have collective bargaining by representatives of their own choosing. It recognizes equality around the conference table, not only of the corporation which is a creature of the law to be represented, but also for labor to be likewise represented by organization and by their representatives. It recognizes not only the theory of collective bargaining, but it goes further and provides that where collective bargaining exists there should also be collective responsibility. In dealing with a group of laboring men you deal with representatives of their own choosing, and, when an agreement is reached, you have then an agency set up whereby you can go to that organization through their representatives and insist on the agreement being kept. This is being done with the railroads. It has been done in the coal-mining operations through the United Mine Workers, who have entered into agreements for periods as long as 3 years. I have known instances where local unions would attempt to interpert the contracts themselves, but the leaders and officers of that union would go to that local union and show wherein they were in error, that they had no right to offer an interpretation over their organization, and they were made to go back to work because they were in error. If we are going to deal with labor on the basis of equality, then it must be through a responsible organization with the leaders of their own choosing. Then, when an agreement is reached, you have an agency set up whereby it can be enforced.

There is nothing, in my opinion, in this bill which will destroy State sovereignty. There are certain problems which we all recognize are Nation-wide and which must be dealt with, not according to State lines but according to national lines. If the States could solve these problems of strikes and lock-outs and controversies in industry, which are more than State-wide, they would have done it. They have had an opportunity for all these many years to set up such an agency, but we all know that these controversies are national in character. The agency set up in this bill will preserve rights of both labor and capital. It will assist without compulsion the amicable adjustment of labor disputes. These controversies are Nation-wide in effect, and society has rights of commerce to be protected and preserved. The general results of this measure will promote economic peace and security. As the railroad labor disputes bill has preserved peace and

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mutual understanding in rail transportation, this measure will extend better understanding to other industries that affect commerce generally. The bill is a step in the right direction. It possesses a procedure for equity and better labor relations.

The SPEAKER. The time of the gentleman from Indiana has expired. All time has expired. The question is on agreeing to the resolution.

The resolution was agreed to.

Mr. CONNERY. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill S. 1958, to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill S. 1958, with Mr. ARNOLD in the chair.

The Clerk reported the title of the bill.

Mr. CONNERY. Mr. Chairman, I ask unanimous consent that the first reading of the bill be dispensed with.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. CONNERY. Mr. Chairman, I ask unanimous consent, while in Committee of the Whole House on the state of the Union, that all members who speak in Committee have 5 legislative days in which to revise and extend their remarks, and I give notice that I shall make a similar request for all Members when we get back in the House.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. CONNERY. Mr. Chairman, I yield 10 minutes to myself. First of all, I want to make it clear to the House that under the rule whereby we have 3 hours' general debate, which would give Mr. WELCH, of California, the ranking Republican member of the Labor Committee, an hour and a half on his side and an hour and a half on our side, to be controlled by myself, we have reached an agreement to divide up the time equally between the proponents and opponents of the bill.

The whole story in this bill from our viewpoint, from the point of view of the Committee on Labor, and the point of view of the Senate when it passed the bill, is to bring about industrial peace, peace between capital and labor.

All the propaganda that has been aroused against this bill, which you have been receiving in your mail, in your telegrams, attempts to set up a smoke screen that the passage of this bill will mean strikes; that it will mean unrest; that it will turn over business to the American Federation of Labor; that it will turn the country over to the labor unions of the United States.

Nothing could be further from the truth. What this bill means to do, and what the members of the Committee on Labor believe it will do, will be to stop strikes; it will stop unrest; it will stop labor disputes in the United States.

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Two years ago, when we passed the National Industrial Recover Act, we passed section 7 (a) as a part of that bill. There was not any fight on section 7 (a) either in the House or in the Senate.

It passed by a great majority. Section 7 (a) set out the rights of labor to bargain collectively, through representatives of their own choosing. All the Wagner-Connery bill, which is before you today, does is to see that this Board which had the enforcing of section 7 (a) is given the power to enforce what we wrote into that section when we passed the N. I. R. A. bill in this House.

Mr. TARVER. Will the gentleman yield?

Mr. CONNERY. Yes; I yield.

Mr. TARVER. The National Industrial Recovery Act has been extended except with regard to the provision for the enforcement of codes. If all this provides is an extension of 7 (a), why is it not taken care of in the extension?

Mr. CONNERY. I did not say that that is all it was. I said this gives the Board the power to enforce what we wrote into section 7 (a) when we wrote the National Industrial Recovery Act.

Under section 7 (a) of the National Industrial Recovery Act and Resolution No. 44 that was passed in the closing days of the last session of Congress, presumably this Board had the power to do something about these labor disputes. They would come in, make a decision, what we think was a fair and just decision—for instance, in the automobile case, in the shoe case, in the textile case, and different cases which came to their attention—but that is all they could do. They could just come in and make an investigation, but they had no power of enforcement, because Resolution No. 44 was innocuous; it had no teeth; it did not give them any power. So much so that all they could do was to turn over the results of their investigation to the Department of Justice or to the N. R. A. Compliance Board. The Department of Justice would have to start in all over again, get new evidence, start the case all over again, and then proceed.

In 3 years we have only had four cases of noncompliance with this resolution brought up before the courts of the United States, and no decision on any of them as yet. All that the N. R. A. Board could do was to take away the Blue Eagle, and that meant practically nothing to offenders. So that all we are asking by this bill is to guarantee to labor the same rights that we gave them in section 7 (a) of the National Industrial Recovery Act, namely, the power to bargain collectively through representatives of their own **[9684]** choosing. That power to bargain collectively through representatives of their own choosing has been upheld time and time again by the Supreme Court in its constitutional aspects. As far as the constitutional aspect of this bill is concerned, there is the Coronado case and there is the Bedford Stonecutters' case. We have heard a lot of talk about intrastate commerce and interstate commerce.

First of all in the Coronado case, the coal was not even mined, it had not started to be mined, it had not gotten to the surface, it was still in the mine, and had not begun its interstate-commerce journey, and they had a strike in the mine, and the Federal court issued an injunction against the district leaders of that union who struck in that mine, and under the antitrust laws they said, "You have no right to strike

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in that mine. We are issuing an injunction against your striking, because by this strike you are burdening interstate commerce, you are interfering with the free flow of interstate commerce."

In the Bedford Stonecutters' case there was a stone quarry in Indiana. The stone was shipped to New York. It was dumped on the ground. Interstate commerce had ended apparently. The workers who were to put up the building with that stone in New York said, "We will not work on it because it came from a nonunion quarry in Indiana." The court issued an injunction against the leaders of that strike and said, "You cannot strike. Your strike is illegal. It is unlawful, because by striking you are interfering with the free flow of interstate commerce. You are obstructing interstate commerce."

The Wagner-Connery bill is built upon those decisions of the Supreme Court which say that a labor dispute, a strike which interferes with the free flow of interstate commerce, is subject to regulation by the Congress of the United States under its interstate-commerce powers. So we do not have any worries or any fears about the constitutionality of this bill.

There are certain unfair labor practices set out in this bill, saying that it shall be unlawful for the employer to finance any union. That does not mean just a company union. It means any union. It means the American Federation of Labor union or any other union that we can think of. It stops him from interfering with his workers in their rights to bargain collectively. I will just read those provisions. They are short:

SEC. 8. It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

Those are the unfair labor practices. As my colleague, the gentleman from New York [Mr. O'CONNOR], said in his brilliant speech today, what about the national trade associations? The employers' associations—they can bargain collectively among themselves. Nobody steps in and says that they cannot organize. Nobody stepped in when they came down to write the codes of the National Industrial Recovery Act, and said to them that they had no right to organize and bring all their tradesmen down, their representatives of their

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organizations, to fix prices and take care of their own interests, and in those codes exploit the workers. No indeed! Antitrust acts did not apply to them. The antitrust laws were only invoked to enjoin workers from striking on the grounds that they were interfering with the free flow of interstate commerce. Well, what is sauce for the goose is sauce for the gander, and it is about time that we begin to realize that labor disputes do not originate with the workers but 99 times out of 100 begin by the employer exploiting his workers by starvation wages and long, inhuman hours of work.

Nobody raised a finger against that, but when labor comes in and says that all we want is the right to go into a booth in a factory and, with no interference by an employer, with no interference by our foreman, write down on a piece of paper whether we want a union of our own choosing, whether we want a company union, whether we want no union at all, that is a different matter. A great cry goes up that we are oppressing the employees.

Mr. FLETCHER. Mr. Chairman, will the gentleman yield?

Mr. CONNERY. I promised to yield first to the gentleman from Georgia [Mr. TARVER]. Then I shall be pleased to yield to my friend from Ohio.

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I yield myself 5 additional minutes.

Mr. TARVER. I am sincerely desirous of ascertaining the gentleman's position. As I understand it, the gentleman takes the position that strikes interfere with interstate commerce; therefore, anything which has a tendency to bring about a strike is proper subject for congressional legislation. That would include disputes about hours of labor, wages, and working conditions, things which the Supreme Court has just expressly said in the Schechter case we cannot regulate in an intrastate industry such as manufacturing. The gentleman's position, therefore, is necessarily directly opposed to the decision of the Supreme Court in the Schechter case.

Mr. CONNERY. No; I do not agree with the gentleman. The Supreme Court has said time and time again, not in 5-to-4 decisions, not in any other close decision, but by unanimous decisions that labor disputes which interfere with interstate commerce are subject to regulation by the Congress of the United States.

Mr. TARVER. And in the Schechter case the Supreme Court cited the Coronado Mining case which the gentleman from Massachusetts has made his leading case, and pointed out that the reasoning of the Coronado decision could not be used to justify an attempt by Congress to regulate conditions of employment in manufacture, mining, or any other intrastate business.

Mr. CONNERY. But I would call the gentleman's attention to the fact that the Schechter case dealt entirely with intrastate commerce. We are dealing in the bill before us with interstate commerce.

Mr. FLETCHER. Mr. Chairman, will the gentleman yield?

Mr. CONNERY. I yield.

Mr. FLETCHER. It has been the practice of employers to b
thugs, gunmen, and strikebreakers to stop strikes.

Mr. CONNERY. Yes.

Mr. FLETCHER. Is there anything in this legislation wh
prevent them from bringing in strikebreakers?

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Mr. CONNERY. I do not think there is. The employers' rights under the law will be just as strong and secure after the passage of this act as they were before. There are State laws as well as another Federal law which we passed last year to punish thugs and others who come in to break strikes unlawfully.

The gentleman and I may be entirely opposed to calling out the National Guard, but there is nothing in the bill that will stop calling out the National Guard, there is nothing in the bill that will stop employers from bringing in thugs, as I interpret the measure; but the employer may not finance a union, he may not interfere with the formation of a union, may not fire a man because he organizes a union or joins a union; and he cannot do as the **[9685]** New England Telephone & Telegraph Co. did when it brought 30 or 40 girls to testify at a code hearing in the old House Office Building here in Washington paying their expenses in hotels here, and bringing them before the code hearing to break up a lawful union of girls who had given their time and their best honest efforts to the formation of a union seeking decent hours and decent wages.

The New England Telephone & Telegraph Co. brought these company-union girls before the code hearing to say how much they loved the New England Telephone Co., how nice the company was to them, that it took them on picnics and gave them a nice trip to Washington, but they did not say anything about how low their wages were and how long their hours at the switchboard were.

We are trying to give to the men and women of the United States the right to be free American citizens, to go about and say, "I am master of my soul, I am not an industrial slave. I do not have to stand for any employer hiring a stool pigeon to work alongside of me to break up my union, and I am free to organize to get decent living wages to take care of my wife and my children." That is what this bill is for.

Mr. FLETCHER. Mr. Chairman, if the gentleman will yield, there have been cases where employers have brought outsiders, strike-breakers, and thugs in to foment strikes in competitors' plants.

Mr. CONNERY. Yes; provocateurs, as the French call them.

Mr. FLETCHER. Likewise, they bring in men from the outside and allow them to destroy their own property and stir up their own men to strike.

Mr. CONNERY. Yes.

Mr. FLETCHER. Is there anything in this bill that will stop such practices?

Mr. CONNERY. I do not think there is, directly or indirectly, but there is on the Federal statute books an act for the protection of commerce from that sort of interference, which was enacted on June 18, 1934. Among other things, that act states:

That the term "trade or commerce," as used herein, is defined to mean trade or commerce between any State, with foreign nations, in the District of Columbia, in any Territory of the United States, between any such Territory or the District of Columbia, and any State or other Territory, and all other trade or commerce over which the United States has constitutional jurisdiction.

SEC. 2. Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

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(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona fide employer to a bona fide employee; or

(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts;

shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from 1 to 10 years or by a fine of $10,000, or both.

SEC. 3. (a) As used in this act the term "wrongful" means in violation of the criminal laws of the United States or of any State or Territory.

(b) The terms "property," "money," or "valuable considerations," used herein shall not be deemed to include wages paid by a bona fide employer to a bona fide employee.

SEC. 4. Prosecutions under this act shall be commenced only upon the express direction of the Attorney General of the United States.

SEC. 5. If any provisions of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 6. Any persons charged with violating this act may be prosecuted in any district in which any part of the offense has been committed by him or by his actual associates participating with him in the offense or by his fellow conspirators: *Provided*, That no court of the United States shall construe or apply any of the provisions of this act in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States.

That statute takes care of such situations.

Mr. WOOD. Mr. Chairman, will the gentleman yield?

Mr. CONNERY. I yield.

Mr. WOOD. The gentleman just said that he did not think in the case of employers adopting the practice of bringing in thugs and gunmen to foment strikes this law would act as a deterrent, but I would remind the gentleman that such acts under this law would be construed as unfair labor practices.

Mr. CONNERY. Yes; that is what I meant by an indirect remedy. I think that would be considered an unfair labor practice.

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I yield myself 2 additional minutes.

Mr. MITCHELL of Tennessee. I know the gentleman is thoroughly familiar with this bill. I would like to ask the gentleman if he will give me the actual mechanics of the bill in connection with its operation. Assume that down in my State, Tennessee, we have a disagreement with organized labor. We will take the case of a little man operating a factory, say, with 50 workmen and they have a disagreement. Perhaps I should grasp this, but I have not been able to get it. Will the gentleman tell me just what the steps would be, assuming that they disagreed?

Mr. CONNERY. First of all, let us assume that my friend Tennessee is the boss and I am the employee. I want to form a of the men working in your factory. I start on this and get boys together and we form a union. We ask you to let us h election day to form this union. You say: "No, I will not do that." Right away I have a remedy. I go to the N

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Labor Relations Board. They call you in and say: "Will you not allow these men to have an election free from interference?" You say, "No." They say, "Very well. We order you to have an election." That is the first thing. Then you say: "I am not going to pay any attention to that." Then the board petitions the Federal circuit court of appeals and tells them: "This employer will not agree to have an election." The court then orders you to hold an election, and if you do not comply with their order the court cites you for contempt.

Mr. MITCHELL of Tennessee. The gentleman does not get what is in my mind. We will assume that the men are organized and that this is a going concern. Let us assume the union is already perfected and organized and that they fail to agree on a wage scale among themselves.

Mr. CONNERY. Fifty-one percent of the membership are sufficient to carry a plan. The representatives of those men will deal with the employer collectively. They sit down with you and deal with you collectively across the table.

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I yield myself 5 additional minutes.

Mr. MITCHELL of Tennessee. I should like the gentleman to understand the situation.

Mr. CONNERY. The gentleman may say: "I will not give you the 10 cents an hour increase you ask." There is nothing they can do then. Nobody asks that you be made to give them the 10 cents an hour. This bill just compels you to deal with the men collectively. You must sit across the table and talk things over with them.

Mr. MITCHELL of Tennessee. Could they shut down the mill during the time the negotiations were going on?

Mr. CONNERY. No; unless they went on strike. Or they could keep working.

Mr. MITCHELL of Tennessee. Is it necessary to come next to Washington before this Labor Board or is there some jurisdiction down there?

Mr. CONNERY. They will have separate subsidiary boards situated in the gentleman's State and all over the country.

[9686] Mr. MITCHELL of Tennessee. Is it contemplated in this bill that these things may be adjudicated in our respective States with a last appeal filed here before the Labor Board in Washington?

Mr. CONNERY. You can do that anyway. There is a conciliation department in the Department of Labor and their job is to go down there and fix things up without going to the National Labor Relations Board at all. This bill only applies where some employer says: "I will not deal with the employees" or, "I am going to fire this man because he tried to organize my plant," or for the violation of any one of these unfair labor practices. The conciliation department of the Department of Labor is an entirely separate organization. In the case of disagreement they would go in and try to fix up the trouble with your employees.

Mr. MITCHELL of Tennessee. This would be done locally?

Mr. CONNERY. Yes.

Mr. HAMLIN. Will the gentleman yield?

Mr. CONNERY. I yield to the gentleman from Maine.

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Mr. HAMLIN. I do not want to be understood by my question as opposing this bill, because I am in favor of it, and I am in favor of laboring people. I have received a great many letters from employers in western Maine who beg me not to support this bill. Can the gentleman give me a reason or two why they should logically ask me to oppose this bill?

Mr. CONNERY. I can give my friend from Maine plenty of reasons. One of the reasons is the natural desire of a man who is an employer and who makes a lot of money allowing the power to go to his head. He will say, "I will do this if I feel like doing it, but nobody is going to tell me how to run my business. They are not going to interfere with my business"; yet he will go down to his trade association and insist that the majority must rule in anything which is for his interest. If there is only a difference of 1 vote, the majority must rule in reference to his interest. I could tell my friend many other reasons why employers selfishly oppose this bill but my time for debate is short.

Mr. Chairman, I have dealt with employers and employees. I have been an employer myself. I ran my own theater at one time and I hired men. I hired actors, actresses, orchestras, and stage hands. I had them work for me. I have been employed in the factory of one of America's best-known corporations, the General Electric Co., as well, so I think I can see both sides of the question. When labor is spoken of in this bill, we are not talking about the American Federation of Labor or any other particular union. We are talking about all the working people of the country. We say that we want all workers to have the right to bargain collectively. We want them to have the right to go to the employer and ask: "Do you not think we ought to get this wage?" We do not want the employer to be able to fire a man because he stands up and says: "Let us get together for our own protection and for the protection of our families, to get short hours and decent wages. Let us form a union." That is all there is in this bill.

Mr. TAYLOR of South Carolina. Will the gentleman yield?

Mr. CONNERY. I yield to the gentleman from South Carolina.

Mr. TAYLOR of South Carolina. I know of no one who objects to the principle of collective bargaining as the gentleman has announced, but there is something in here I should like to ask the gentleman about because he knows more about this matter than anyone else. I am reading now from subsection 3 of section 2 on page 3:

> The term "employee" shall include any employee and shall not be limited to the employees of any particular employer.

Mr. CONNERY. I know what the gentleman means.

Mr. TAYLOR of South Carolina. Does that mean that every man on a pay roll has it within his own right or privilege to join whatever labor union he wants to at that plant?

Mr. CONNERY. Yes. Let us take the case of a machinists' union. One employer on this side of the street has a machinists' union and the man across the street has a machinists' union and the man in your factory and the man across the street belongs to one union.

Mr. TAYLOR of South Carolina. Let us go a step further. Suppose in Lynn, Mass., they had 10 cotton mills, 1 being an Anderson mill, another Equinox mill, and so on down the line. Suppose that the

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employees of one drove a pretty good bargain with their employer and the employees of the other establishments did not drive such a good bargain with their employers. When it got around to the final analysis all of them had driven a bargain and there would appear to be a differential in the wages of about 40 percent.

Does the Board have the right to adjust that difference among those men by making all the employers one group and all the employees of the several mills another group?

Mr. CONNERY. No; the employees can go into any organization they want. If you are an employer and the men in your plant want to form a union and call it the "National Union" and deal with you, they can do so and have nothing to do with any organization outside. If on the other hand they want to join a machinists' union in your plant and affiliate with another union connected with the American Federation of Labor, they can do that.

Mr. TAYLOR of South Carolina. If that unit wishes to bargain with the employer, they would be tied up with the American Federation of Labor who would name the man to go in there and also that same department in another plant would be tied up with the American Federation of Labor and so on with respect to all 10 plants in Lynn, Mass.

Mr. CONNERY. They would all belong to one big union; but, of course, your wages would be the same in each plant, because the federation, through its representatives by collective bargaining, would insist on that equality for all the plants doing the same kind of work.

Mr. TAYLOR of South Carolina. This bill provides that the employer can have nothing to do with the union. Beginning at the top scale of the pay roll, at what point would you segregate them and say to one that he belongs to the employer class and to another that he belongs to the employee class?

Mr. CONNERY. They have not had any difficulty about that in any of the boards. The Federal Trade Commission or any other Federal board never had any trouble finding out who was an employer or an employee.

Mr. TAYLOR of South Carolina. Does the man in the boiler room or on the yard, however insignificant his job may be, have the right, in his own right, to join a union so that the boys on the inside cannot ballot against him and keep him out?

Mr. CONNERY. Of course, he will have his chance to go in and vote with all the rest of the people in the plant. The Board can declare what unit is the unit in that plant.

Mr. TAYLOR of South Carolina. That is not the point I have in mind right now. Can every individual on that pay roll, it makes no difference who he is, demand the right to go in and join a particular union in that plant?

Mr. CONNERY. Yes.

Mr. TAYLOR of South Carolina. And none of his fellow workmen can keep him out?

Mr. CONNERY. They cannot interfere with him at all. We have had a practical sample of that in the case of the General Electric Co. in Lynn. They had an election of that sort, and they do not belong to the American Federation of Labor, and they have their own union.

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Mr. WOOD. Mr. Chairman, will the gentleman yield?

Mr. CONNERY. I yield.

Mr. WOOD. They have the right to join the union; but if the rest of the employees in that plant form an organization, they do not have to take that man in if they do not want to.

Mr. TAYLOR of South Carolina. That is what I was trying to get at.

Mr. WOOD. No more than they would have to do so in the present situation. This bill does not compel any group to take in somebody they do not want to take in.

[9687] Mr. TAYLOR of South Carolina. What would become of that man? If the majority group should establish a closed-shop agreement with the employer, what would become of this man who knocked at the door and could not get in?

Mr. CONNERY. He can get in.

Mr. TAYLOR of South Carolina. The gentleman from Missouri says he cannot.

Mr. CONNERY. There is nothing to keep him out. For instance, in the case I have referred to, they had three or four different questions on the ballot: Do you want an independent union, do you want a company union, do you want this or that, and they voted without any interference from the employers or anybody else. They voted in this case for an independent union of their own. They had, I think, 80 or 90 percent of the plant who voted to come into the union and the representatives which this 90 percent elected do the collective bargaining with the company.

Mr. TAYLOR of South Carolina. I understand that.

Mr. CONNERY. I do not think you need worry about that situation. The man to whom you refer would join the union and even if he did not he would get union wages, because the men bargaining collectively would bargain for everyone in the plant.

Mr. TAYLOR of South Carolina. I want to know what becomes of the individual who goes up to the union and knocks and says, "I want to become a member," and they ballot among themselves and say he cannot become a member. This being the majority group, they go out to the office and bargain with the employer and effect a closed-shop agreement and then this man who is denied membership, in effect, is legislated out of employment by this bill.

Mr. CONNERY. Oh, no; I do not agree with the gentleman about that. In the first place, the man would join the union, and, second, no employer can be forced to make a closed-shop agreement.

Mr. TAYLOR of South Carolina. Will you indulge me a little further?

Mr. CONNERY. I should like to, but I have all these other colleagues to whom I should like to yield and I am afraid I am taking up too much time.

Mr. CHRISTIANSON. Mr. Chairman, will the gentleman yield?

Mr. CONNERY. I yield to the gentleman from Minnesota.

Mr. CHRISTIANSON. The object of collective bargaining, of course, is to reach an agreement. Is there anything in this bill which
make it possible to enforce an agreement as to either party
controversy?

Mr. CONNERY. The gentleman means in the bargaining itse
other words, can you make the employer give an increase in

Mr. CHRISTIANSON. Yes; or can you bind the employee?

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Mr. CONNERY. No.

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I yield myself 1 additional minute, and may I make this statement to my colleague to clarify the situation? I have 45 minutes for those who are in favor of this bill and 45 minutes for those who are against the bill. I have consumed 28 minutes. It is not fair to my colleagues who want to talk on this bill for me to use further time. I should love to talk with you for an hour, but it would not be fair to my colleagues. Under the 5-minute rule I shall try to yield further.

Mr. EKWALL. Mr. Chairman, will the gentleman yield?

Mr. CONNERY. I yield.

Mr. EKWALL. Under this bill is it not a fact that they can still have company unions not affiliated with any other union?

Mr. CONNERY. If the employees want to have a company union in any plant and they vote for a company union, they can have it.

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I yield myself 1 more minute.

Mr. EKWALL. Will the gentleman yield?

Mr. CONNERY. Yes.

Mr. EKWALL. Suppose 51 percent of the employees go into the American Federation of Labor and 51 percent vote to go on a strike, does that affect the other 49 percent?

Mr. CONNERY. You are not dealing with strikes in this bill; you are dealing with adjustments to prevent strikes.

Mr. EKWALL. Most of the letters that I receive from employers claim that it will make more strikes, and I would like to have your view as to this because this is a most important consideration.

Mr. CONNERY. Well, they are crying before they are hurt, and I believe in a few years they will feel that the best thing that ever happened to them was the passage of this bill to do away with strikes and labor disputes.

Mr. HARTLEY. Will the gentleman yield?

Mr. CONNERY. Yes.

Mr. HARTLEY. I am in favor of section 7 of this act, but I want to ask the gentleman a question. Section 8 says that it shall be unfair labor practice to interfere with, restrain, or coerce employees in the exercise of the right guaranteed in section 7.

Mr. CONNERY. I know what my friend is going to say. If you accept the Tydings amendment you might as well throw this bill out of the window. Some courts have interpreted the word "coerce" in labor disputes so that you cannot ask a man to join a union, you cannot say that he shall join a union, you cannot threaten to strike, you cannot picket, you cannot circularize banners, you can hardly breathe. That is the weapon of the strike breaker, the weapon of the selfish employer that Congress outlawed in the Norris-LaGuardia Act.

Mr. HALLECK. Will the gentleman yield?

Mr. CONNERY. I yield to the gentleman.

Mr. HALLECK. The gentleman from Tennessee referred to a factory employing 50 people, manufacturing a product sold entirely within the confines of Tennessee. Is it the idea of the gentleman that this act would assume jurisdiction in such a case?

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Mr. CONNERY. I doubt whether the Board could go in there unless it affected interstate commerce.

Mr. HALLECK. Why does not the bill provide for that?

Mr. MOTT. Will the gentleman yield?

Mr. CONNERY. I yield to the gentleman.

Mr. MOTT. Why do you not state in the bill that this shall only apply to interstate commerce?

Mr. CONNERY. Because the court is to decide as to where commerce begins and ends and just what affects commerce, and decide each case on the facts of that case

Mr. MOTT. If you take out the preamble of the bill there is no limitation of jurisdiction, nothing about interstate commerce, and nothing about industry that affects interstate commerce.

Mr. CONNERY. I think the gentleman will find two or three places in the bill where commerce is directly mentioned. On page 7, subsection 7, the term "affecting commerce" is particularly defined.

Mr. MOTT. Not in a way that will limit it to interstate commerce.

Mr. MARCANTONIO. Section 9 of the bill provides that—

Whenever a question affecting commerce arises concerning the representation of employees—

And so forth.

Mr. MOTT. What has that to do with unfair practices? If you do not intend to make it universal, why not limit it in language?

Mr. ELLENBOGEN. Mr. Chairman, will the gentleman yield?

Mr. CONNERY. Yes.

Mr. ELLENBOGEN. I call the gentleman's attention to the fact that in section 6, page 6, commerce is defined as "commerce between the States", and on page 7 we find the language:

Labor dispute burdening or obstructing commerce—

And so forth.

Mr. MOTT. Oh, that is true. That is a definition of commerce, but then turn to section 8, where the bill pre-[9688]scribes what shall be an unfair practice, and show me in section 8 any limitation whatever. Show me why under section 8 this would not apply to the printing business in a small town in the center of a State.

Mr. ELLENBOGEN. If the gentleman will turn to page 14, line 23——

Mr. CONNERY. If the gentleman will permit me to conclude, I have taken up too much time already.

Mr. ELLENBOGEN. Give me half a minute.

Mr. CONNERY. The gentleman will have time under the 5-minute rule. I want to be fair to both sides. So I say in conclusion I wish I had much longer time so that I could yield to all my colleagues who desire to question me. I shall be glad to answer any question in my power. I hope when we get to the 5-minute rule, you will vote down all amendments. I hope you will vote this bill as it is, as reported to you today by the Committee on Labor, with two amendments which I shall offer, one to protect free speech, and the other in regar making provision for the continuance of the Board between Sunday, when, except for an Executive order, the Board would g of existence under Resolution 44, and the time until the bill is p and signed by the President. Except for those two amendm hope the House will vote down every other amendment exce

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committee amendments, because this is the bill in the form that the President of the United States wants it now, and may I say that with the passage of this bill and its signature by the President labor will owe an everlasting debt of gratitude to President Franklin Delano Roosevelt for his insistence in demanding that Congress do justice to the toiling masses of America by passing now this great humanitarian piece of legislation, which, to my mind, will mean peace between capital and labor, better living conditions, better wages, and a place in the sun for America's workers. All honor to the President of the United States! [Applause.]

The CHAIRMAN. The time of the gentleman from Massachusetts has expired.

Mr. WELCH. Mr. Chairman, I yield 15 minutes to the gentleman from Pennsylvania [Mr. RICH].

Mr. RICH. Mr. Chairman, I might preface my remarks first by stating that before I came to Congress I had been a manufacturer all of my business life, and I have employed labor and do now employ labor. During the time of my sojourn in business I never suffered a labor strike. Probably I am not the best employer of labor, and for that reason I do not believe that I am the worst. My only object in considering this bill is to try to do more for labor. I am just as much interested in seeing that labor has its just due as any man in the House. I feel no business concern can succeed today—nor could it succeed formerly, within the last 25 years or more—if labor and capital did not work hand in hand. We can say, as laborers or as manufacturers, we ought to believe in the Golden Rule, and all the laws that we might pass will never take the place of that law of Him who rules supreme above.

I cannot conform to all of the things suggested in this bill because of the fact that I believe as the bill is drawn today it will cause us to see more strikes in the next 2 or 3 years than we have ever seen in the history of this country, and Members of Congress know that in the past 2 years we have had more strikes than we have ever had in the history of the country.

Mr. GRISWOLD. Mr. Chairman, will the gentleman yield?

Mr. RICH. I do not intend to yield to anyone until I have finished my statement, and then, if I have time, I shall yield principally to those who are labor-union men or who represent the labor unions in the House.

If an employee must be left free to join a union, so should he be left free not to join a union. There are rights of the employees and there are rights of the employers, and all of those rights must be considered if we are going to pass legislation that will eliminate strikes and make conditions in the country better for the employer and for the employee; because, as I said before, labor and capital are inseparable. They must work together. The majority of business men are honest and are striving to do the thing that is best for labor and for their business and if the politicians make such laws that radicals and intimidators are permitted under laws, to close industry, foment strikes, then greater harm than good will be done, men will be put out of jobs instead of employed, industry will be closed rather than operated.

I am not a lawyer. I cannot, therefore, speak of the quality of this act with legal authority, but I have read and listened to authori-

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tative argument to which the committee of this House has paid little attention. They convince me that the measure before us is in deadly conflict with the decision of the Supreme Court in the Poultry case and the long line of cases that led up to that declaration. If I am not a student of common law, I, at least, have some common sense. I understand the difference between the power of Congress to regulate intercourse between the States, which we call the commerce power, and the prohibition against any attempt by Congress to regulate production within the States. I know that the power to regulate commerce extends to the persons engaged in that commerce and the instrumentalities of that commerce, like interstate railroads, telephones, and ships. I know the difference between regulating the relations between employer and employee in carrying on interstate communication on a railroad or a telephone company, or a ship, and undertaking to regulate the employment relations of the parties who are engaged in building engines or making telephones or putting a ship together. I can see that one is a regulation of commerce and the other is a regulation of production.

I know the Supreme Court, in the Poultry case, said in very clear language that —

> Persons employed in slaughtering and selling in local trade are not employed in interstate commerce. Their hours and wages have no direct relation to interstate commerce.

I know that means that Congress cannot regulate the hours or wages or working conditions of a man engaged in plucking poultry or making shoes or manufacturing furniture, even though, after the job is finished, in each case the goods might be shipped in interstate commerce. For the same reason, it is just as clear to me that a dispute between employer and employee about plucking poultry or making the shoes, or the furniture, is a dispute not in commerce but in production, and you cannot make it a part of commerce by saying it is or declaring that it affects commerce by using a lot of words to that effect, when, as a matter of fact, as the Supreme Court has so plainly said, as of other acts, the relations of employer and employee engaged in manufacture or local service may remotely and indirectly affect it.

I know that it is equally true that for years, whenever there was a local strike that shut down a plant, in whole or part, that any attempt to bring an injunction against the strikers, because they were restraining production and therefore restraining commerce, was denied by the Federal courts, and it was the unions who raised this issue. And I know that the Supreme Court sustained their view and, in the poultry case, the Court recites these very cases and says that—

> This principle frequently has been applied in litigation growing out of labor disputes.

Of course, if all the miners in the United States quit work together in order to deprive the Nations of fuel, their purpose being to stop all its commerce, we would have a very different situation. We would have just such a one as confronted Woodrow Wilson, in 1 when the same President of the United Mine Workers threatene country with a general strike, just as they do today, unless we

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the Guffey bill. Then President Wilson, addressing this Congress, October 27, 1919, said:

> This strike is not only unjustified; it is unlawful.

And to protect the people of the United States he proceeded to stop it. There was a different conception of the public interest in the White House then.

I speak of this to call the attention of the House to the difference between any kind of a combination whose purpose is to tie up or obstruct the commerce of the United [9689] States and the attempt to make every petty dispute between an employer and an employee in local production the ground for a complaint to a Federal board. Surely no Member of this House who has regard for the oath which he took to support the Consitituon can fail to have a doubt as to the validity of this legislation. If he does have such a doubt, then he ought to resolve it before he acts, for I distinctly repudiate such statements as are made by Mr. William Green that Congress ought to act and then let the Supreme Court determine the constitutionality of our acts. We are agents with limited powers, and the Court gives every reasonable presumption to the constitutionality of what we do, because it believes that we have settled our own doubts and not passed them up to the Court.

I read the other day the statement of our congressional obligation by one of the greatest American judges in his work on constitutional law, and I venture to call it to the attention of this House, because too many of us have forgotten its nature.

> Legislators have their authority measured by the Constitution; they are chosen to do what it permits, and nothing more, and they take solemn oath to obey and support it. When they disregard its provisions, they usurp authority, abuse their trust, and violate the promise they have confirmed by an oath. To pass an act when they are in doubt whether it does not violate the Constitution is to treat as of no force the most imperative obligations any person can assume. A business agent who would deal in that manner with his principal's business would be treated as untrustworthy; a witness in court who would treat his oath thus lightly, and affirm things concerning which he was in doubt, would be held a criminal. Indeed, it is because the legislature has applied the judgment of its members to the question of its authority to pass the proposed law, and has only passed it after being satisfied of the authority, that the judiciary waive their own doubts and give it their support. (Thomas M. Cooley, Principles of Constitutional Law.)

Let me give you a test for this bill. Suppose there was a labor dispute in the Schechter Poultry Corporation, the company which appealed the case in which the Supreme Court just decided. Suppose a complaint is made to the labor board you propose to establish charging that this man Schechter committed an unfair labor practice by attempting to interfere with the self-organization of his employees or refused to bargain with their representatives. Would that be a case for this board? Here, of course, Mr. Green—or Mr. CONNERY—would say "yes." Why? Because it would be a "labor dispute," under paragraph 9 of section 2 of this bill, and under paragraph 7 of the same section, it would affect commerce, because it might be "tending to lead to a labor dispute pertaining to or obstructing commerce or the free flow of commerce." Would the proposed labor board take jurisdiction? Of course it would; but if it did, it would plainly be dealing with an employment relation which the Supreme Court says

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is local. But, although it is local in every circumstance, this bill is drawn so as to drag it by definition into commerce. Are the gentlemen of this House fooled into believing that by calling a thing "commerce" they can make it so? I do not have to be a lawyer to know better than that.

Referring to the remarks of the gentleman from Massachusetts [Mr. CONNERY] that this legislation has been sent down here by the administration—and when anything is sent here by the administration we are supposed to be gullible enough to accept it as it is forwarded to us without amendment—I think it is an imposition upon the Membership of Congress, and I want to read at this juncture where Mr. Green, of the American Federation of Labor, threatened a general strike. This is in New York, under date of May 23:

NEW YORK, May 23.—Labor stands ready to tie up the Nation's industry by throwing down its tools in a general strike if Congress fails to grant its basic demands, William Green, president of the American Federation of Labor, warned today.

CROWD ROARS APPROVAL

The crowd roared its approval as the labor leader threatened:
"If Congress fails us, labor has its economic strength. If it comes to the point we can mobilize our complete strength and refuse to work until we get our rights."
And when the applause had thundered away, he added grimly:
"That is no idle threat! I mean just what I say."

In addition, he told the audience, labor must be ready to mobilize its political strength to defeat unfriendly Congressmen when they run for reelection.

I want to say to Mr. Green and I want to say to anybody in this land of ours, whenever I cannot use that God-given right of mine to think, I do not want to be in the House of Representatives. I would not be here, and if Mr. Green or anybody else thinks he is going to domineer me when it comes to using my best judgment in trying to legislate, then God forbid that I be a Member of Congress. This is intimidation of the worst sort, and that is what radical labor men resort to, to coercion and force to meet their own selfish ends, whether it is the best thing to do for the greatest number or not. I personally must try to make laws for all and for their best interest, not for any particular minority when it does injury to a greater number.

Now, when you examine this bill you can see that is precisely what is proposed to be done, for we propose to create a permanent labor board to entertain complaint with respect to what are called "unfair labor practices." These are five in number, and they can be committed only by an employer. The same things may be done by an employee, but they are not unlawful. Now, what are these things? They are to restrain or coerce employees in self-organization or forming, joining, or assisting labor organizations, or bargaining collectively through representatives of their own choosing. A little later we will see that this is precisely what the bill will not permit, but for the moment let us see what the labor practices are. I have said that they are interference, restraint, or coercion with the above rights by an employer, or domination or interference by him or the contribution of financial support to any labor organization. Of course, under the rules established by the Board an employer may be permitted to allow employees to confer with him during working hours without loss of pay, but it is very interesting to observe that he is not to be

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permitted to allow the employees to confer among themselves without loss of pay. Yet how can they prepare to confer with him if they may not confer among themselves? Of course, the purpose of that is to permit only one kind of a labor organization to function.

The remaining unfair labor practices are to discriminate in employment so as to discourage or encourage membership in any labor organization or to discriminate against an employee because he files charges under this bill or to refuse to bargain with the representatives of employees. The employer may make an agreement with a majority of his employees to make it a condition of employment that the employee shall join the majority organization. That, of course, means the establishment of the closed shop.

Now, what do these terms mean? What is interference? Is it discussing with employees the merits or demerits of any particular organization? Is it refusal to deal with a Communist organization? Because Communist organizations, under the definition of this bill by paragraph 5, section 2, have exactly the same standing as any reputable labor organization. So long as part of its purpose is to deal with an employer respecting working conditions, he is just as much obliged to deal with its representatives as any other kind of organization and thus encourage the very type of organization that is constantly denounced on the floor of this House. Moreover, it does not make any difference what the reputation of any organization that seeks to deal with the employer is. It may not keep its contracts, it may have bad leadership, but it will be an unfair practice not to recognize its representatives and deal with them. If the employer discusses these things with his employees, is he interfering with them? Is he discriminating in employment when he refuses to hire men of bad reputation, or is he dominating and interfering with the formation of a labor organization if he undertakes to discuss the number of apprentices that ought to be permitted, or any one of the numerous questions that arise in the normal relations of employer and employee by means of which they live in peace and amity?

[9690] Walter Lippmann severely criticized this measure, because he said that in a field where clear definition was most important this sloppy measure presented vague and indefinite definitions of unlawful conduct that would constantly multiply disputes and litigation. In other words, it encourages by its bad draftsmanship exactly what it claims to minimize.

That is what they call a "penal statute." The courts have again and again said that if such statutes are ambiguous and do not clearly tell us in advance what we can do and what we cannot do, they are bad laws. In this field they make worse policy because they breed discord and bitterness and afford to the man who is looking for it the chance to make unfounded complaints. What this bill will do is to create a gigantic police court, for employers may be summoned from every part of the United States on any kind of a petty dispute, and if the board constituted is no more impartial than the one which we have witnessed in action or the one over which the sponsor of this bill presided, it will breed strikes as fast as a fish lays eggs.

Perhaps the worst feature of this bill which carries the intrinsic evidence of this unfairness is the declaration that only the employer shall be prohibited from intimidation, coercion, and restraint. The

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President of the United States, when he settled the automobile dispute, March 25, 1934, made a notable declaration. He said:

> The Government makes clear that it favors no particular union or particular form of employee organization or representation. The Government's only duty is to secure absolute and uninfluenced freedom of choice, without coercion restraint, or intimidation from any source.

The President was not talking about his opinion. He was talking about what was the Government's duty. Now, by giving his approval to the measure before us he has abandoned his conception of public duty and substituted for it his endorsement of tolerated coercion by one class of citizens, while condemning the same kind of coercion by another class of citizens. I know of no greater injustice than to say that it shall be unlawful for one group of our people to do that which other groups are permitted to do. It is a distinct encouragement to lawlessness. In this case it is not secret, occasional, or sporadic lawlessness.

It is notorious, customary coercion which accompanies every kind of a labor dispute of any proportions with which we are familiar. Every Member of this House knows it as well as I do. I have no use for boycotts or blacklists or intimidation by employer or by employees, corporations or by labor unions. The corporation and labor union which hires thugs or tolerates or condones violence ought to keep the lock step of fellow convicts. I know it will be said that labor unions condemn lawless acts, but I have yet to hear of any labor organization that has ever suspended or expelled any member for engaging in such conduct of which it was the beneficiary. Yet this House, in the face of the declaration made by the President of the United States as to what the duty of government is, is asked to write into this bill a prohibition of coercion against employers on the ground that they alone interfere with self-organization or the selection of representatives. Every one within the sound of my voice knows that closed-shop unionism is determined to have no representatives except those of its own selection. It has not accepted the outcome of any election that went against it under elections supervised by the Labor Board, no matter how great the majority. Mr. Green has said, in an interview with the American Magazine for May, that he never will accept the results of such an election, save temporarily and under compulsion.

I have always thought that the most elementary right of an American is that of selecting and pursuing the employment of his choice. In that right he is to be free from molestation or intimidation by anyone. This House is asked to write in the law the proposition that he shall be free only from employers and that the equally notorious coercion of labor organizations shall be ignored. How long do you think that kind of arbitrary classification will stand in a court? You also propose to give to this labor board, with only the guidance of your vague definitions, the power to determine what constitutes these unfair labor practices. You give that board a jurisdiction and an authority greater than is possessed by any of our courts. Without rules of evidence it is to make findings of facts and they are to bind the court which reviews them. It is to have the power to have its orders enforced by the courts, and how? By injunctions. The Ameri-

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can Federation of Labor has fought in Congress for years to destroy what it called "government by injunction." Now it is asking for it and asking you to govern the employment relations of the United States by injunction. But this time it is the conduct of employers, not their own, that is to be subjected to injunction.

All that I have said about the unconstitutionality of this bill is emphasized by what the Committee on Labor has done with it. Since it passed the Senate they have rewritten their report and brought in 21 amendments for the purpose of trying to save it from the condemnation of the courts, but no trick of theirs can save it from its fundamental defect, and that is the attempt by the Federal Government to take control of and regulate the relation of employer and employee entirely within the States, and while engaged in acts of manufacture, construction, mining, and service. They still think that a dispute in a factory, a restaurant, a barber shop, or a pants-pressing establishment might lead to a dispute that might lead to a strike that might threaten our commerce. The more I have read this bill the more I am inclined to think that the gentlemen would pass a bad bill and have it overthrown in order that they may find a new reason for criticizing the Court which will be compelled to condemn this flagrant violation of constitutional authority.

But are the gentlemen gaining new rights for labor? On the contrary, I think they are inflicting new wrongs upon the worker, for, if this bill is enacted, his right of self-organization and association will not be enlarged—it will be contracted. First of all, the labor board, not himself, will determine the unit of employment which is to select representatives. Unless he is a part of the majority in that unit he will not be represented by an agent of his own selection. As an individual, whether he is in a big or little unit of employment, he cannot make his own contract, and sell his own labor if a majority of his fellow employees want to sell it collectively. This is not enlarging the right of self-organization or association. This bill gives fellow employees the right to coerce and intimidate their fellows in the exercise of every one of these rights. It destroys individual bargaining, takes away the right to determine their own unit of employment, and, unless you are part of a majority, the worker will have to let someone whom he did not select sell his labor for him. I predict with confidence that, if this measure is enacted, it will have a short life but an unhappy one, for it will breed strife and bitterness, as it is neither practical nor effective to protect the rights it pretends to safeguard. On the contrary, it is defective, biased class legislation and deserves from this House the condemnation it will receive from the courts.

I cannot conclude my comments on this measure more appropriately than by quoting the characterization which it received from the distinguished Senator from Maryland [Mr. TYDINGS] who, pointing to the lopsided, arbitrary, and unjust provision approving coercion by one group and tolerating it when committed by another, said:

> As I see this particular section, it looks to me like an effort to force every man in America to join a certain kind of union, whether or not he wishes to join that union; and the coercion and intimidation features are not to be inserted in this section because a certain union desires a free hand to take the workers from the groups in which they now belong into groups into which they may not wish to go.
>
> That is the naked fact back of the opposition to this amendment. It is an amendment to force all working people into a particular union, and every Senator on this

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floor knows that to be the truth. [CONGRESSIONAL RECORD, May 16, 1935 p. 7672.]

The Wagner Act will work in the interest of only a small minority of workers represented by professional labor leaders, will promote industrial strike, will bring about an epidemic of labor disputes, will drive employers and employees apart, and will substantially impede recovery.

[9691] It will in practice tend to make a closed shop of every plant and to make every employee carry a union card if he is to earn a living.

It penalizes employers for so-called "unfair practices" but will leave the agents and organizers of labor unions or the labor unions themselves completely free to use violence, intimidation, and other coercive methods which they may seek to employ.

Every employer is compelled to report in detail every dollar of money received and how every dollar is expended, so why not compel labor unions to give a strict accounting of the money that they receive, and above all, how same is spent? [Applause.]

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. RICH] has expired.

Mr. CONNERY. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. DUNN].

Mr. DUNN of Pennsylvania. Mr. Chairman, the legislation before us is, in my opinion, one of the most progressive and humanitarian measures that was ever brought before any Congress. If this bill is enacted into law, the laboring man of the United States will, for the first time, get a square deal. [Applause.]

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

Mr. WELCH. Mr. Chairman, I yield 5 minutes to the gentleman from Wisconsin [Mr. WITHROW].

Mr. WITHROW. Mr. Chairman, the measure we are considering today is, in my opinion, one of the most misunderstood and misrepresented pieces of legislation that has been considered by this House. I have received numerous letters of protest stating that if this measure were passed it would wreck industry. Most of the individuals writing these letters do not understand the measure. They do not realize that this board of three appointed by the President and confirmed by the Senate has no jurisdiction over the determination of the hours of labor; have nothing to do with wage disputes; that their only duty is to determine who shall represent employees so that collective bargaining may be an actuality.

This measure, first, writes into the law the right of workers to bargain collectively with employers through representatives of their own choosing.

Second, it creates a board of three, appointed by the President and confirmed by the Senate, to serve as a "supreme court of labor" over industrial disputes.

Third, it outlaws company-dominated union.

Fourth, it specifies that employers must bargain with representatives of the majority of their workers.

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Fifth, in cases where there is doubt about the representatives of the majority, the board is authorized to order and supervise plant elections to make this determination.

The deluge of protests I have received reminds me of what happened in the State of Wisconsin prior to the enactment of the unemployment-insurance act. The industrialists of Wisconsin at that time said that the passage of the unemployment-insurance act would wreck industry. Notwithstanding these protests, the measure was enacted into law and has been in force for almost 1 year. Now that industry in Wisconsin realizes the benefits that will be derived from unemployment insurance, they are heartily in favor of it. As a matter of fact, I have a number of letters from industrialists who now are convinced that in the future it will be a lifesaver, although they protested vehemently prior to its passage.

I predict at this time that if this measure is enacted into law—and it will be—that within a short period after it is working the majority of these same individuals who are now protesting against its passage will favor its retention.

As has been said by the gentleman from Pennsylvania [Mr. RICH], strikes have been prevalent in this country during the past 2 years.

The passage of this legislation is the only cure for the labor difficulties which have been characteristic for the past few years.

Mr. RICH. Will the gentleman yield?

Mr. WITHROW. I yield.

Mr. RICH. If we find there are less strikes in the next 2 years, I will be the first one to congratulate the gentleman on his recommendation. If, on the other hand, we find we are going to have more strikes, then I should like to have the gentleman call it to my attention.

Mr. WITHROW. Very well. That is fair enough.

Eight hundred and twelve thousand one hundred and thirty-seven workers were involved in strikes during 1933. In 1934 the number rose to 1,277,344. Within a span of 24 months over 32,000,000 man-days were lost because of labor controversies.

Nine-tenths of these disputes arose because the workers were demanding the right to organize and bargain collectively with their employers. There was no question of higher wages or shorter hours involved.

Our workers will never be content and satisfied until they have a representation and an organization which is really and truly of their own choosing. On the whole, they will never submit to a company-dominated organization.

The company-dominated union is frequently supported in part or in whole by the employer. I cannot conceive how anyone can rise to the defense of a practice so contrary to American principles as one which permits the advocates of one party to be paid by the other. Collective bargaining becomes a sham when the employer sits on both sides of the conference table or pulls the strings behind the spokesman of those with whom he is dealing.

The right of self-government through fairly chosen representatives is a right which is inherent to the American people and to our American form of government. This bill does no more than guarantee that right to American labor.

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No sincere objection can be made to this bill except by those who seek to exploit the American working man and woman. [Applause.]

Mr. WELCH. Mr. Chairman, I yield 10 minutes to the gentleman from Indiana [Mr. HALLECK].

Mr. HALLECK. Mr. Chairman, I have asked for this time in order that I might in a few minutes discuss the question of the constitutionality of this act.

My position is a little different from some of the other Members. I came into this Congress late. I came down here and stood by myself in the well of this House and about all that I remember was that the Speaker asked me whether or not I would swear to support the Constitution of the United States. The President of the United States took that same oath of office.

In considering this bill I think this is true, and it cannot be denied, that as Congressmen we should first determine in our own minds whether or not it is constitutional. If we determine that it is constitutional, then we should determine whether or not on its merits we are for or against it. But, if we determine honestly and conscientiously in our own minds that it is unconstitutional, I do not see how any of us can vote for it. It may be said that that is a question for the courts. I say to you that the first line of defense against attack on the Constitution is the Congress of the United States. We have no moral and no legal right to enact any law in contravention of the Constitution. I say that is a duty that is incumbent upon every one of us. In considering this measure and every other measure, we ought to have that thing in mind.

I think some of those who contend against the Constitution have forgotten that those people who drafted the Constitution did not create a lot of new truths or new facts. They did not discover anything. They simply set forth in black and white a lot of self-evident truths. They set forth in black and white for the protection of our liberties and our form of government those things that the experiences of all civilization had proved were essential in the make-up and government of any free people.

Now, in considering this bill the Chairman of the Committee on Rules said that it seeks to do what was declared could not be done in section 7 (a) of the National Industrial Recovery Act. I say that if this is an attempt to do that, it is clearly unconstitutional; and if the ingenuity of the Government attorneys could not sustain section 7 (a) of the **[9692]** National Industrial Recovery Act, then, in like measure, they cannot sustain this provision and this bill.

You are all familiar with the Schechter decision, which said that the Federal Government can only regulate interstate commerce or those things having a direct effect and bearing upon interstate commerce. Now, let us consider this bill. What might be called the "preamble", the thing that is the argument for the constitutionality of the bill, starts out by saying that the denial to employees of the right to organize and bargain collectively leads to strikes. Then what do the strikes do? Strikes lead to burdens on interstate commerce. Now, let us consider the indirect and the direct causation, if you please, in the light of the Schechter case. The direct cause is the failure to recognize the right of collective bargaining. That induces strikes. Strikes are the direct effect and burden on interstate com-

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merce. Who can contend for a minute that the matter of collective bargaining in a purely intrastate business, in the case of a company, for instance, about which I inquired of the Chairman of the Labor Committee, has a direct effect upon interstate commerce? I want to make this clear: I stand for the principle of collective bargaining. Labor has a right to bargain collectively in order that their bargaining power may equal that of the employer. They have a right to bargain by representatives of their own choosing; but that is not the first issue. The first issue is, Is this bill constitutional? I do not believe that it is.

There is no effort to limit the application of this bill or the power of the board that is to be set up to the control of interstate transactions or transactions directly affecting interstate commerce. This is exactly the thing criticized in the Schechter case. The Supreme Court there said it was not attempted to limit the application of N. R. A. to interstate trade and commerce alone. The board set up under this bill will look to the provisions of this bill believing that the Congress in its alleged wisdom has enacted a bill in harmony with the Constitution, but the minute they begin to enforce the act with respect to a purely intrastate business, the same decision will be handed down that was handed down in the Schechter case.

You may ask, what is the difference? The difference is that in the 2 years it takes to get a ruling on the constitutionality of a measure the rights of people under the Constitution as they conceive them, have been taken from them under an act of Congress. That is why I say it is imperative first of all for Congress to determine whether or not an act is constitutional. We cannot justify the passage of an unconstitutional act by saying that it is a question for the courts, because in the meantime people may be imprisoned or have their property taken from them.

The Coronado case and other cases were cited. The Coronado Coal case involved the mining of coal in one State for delivery in another in interstate commerce. The Danbury Hatters case involved the manufacture of hats in Connecticut and their sale in San Francisco, in interstate commerce. The Bedford Stonecutting case arose out of stone produced in my State and sold in the East in interstate commerce. The Printing Press case involved printing presses made in Battle Creek, Mich., and sold in interstate commerce in New York. Certain people combined and conspired to restrict the free flow of interstate commerce in violation of the Sherman Antitrust Act, to restrict and prevent those manufacturers from transporting their property and selling it in other States. I would not contend for a minute that that was not interstate commerce; clearly it is. If this bill by its terms undertook to limit this board and its jurisdiction to matters of that sort, I would say then that it was within the realm of interstate commerce and subject to control by the Federal Government.

If you do not believe in the Constitution, if you do not believe in States' rights or the exercise by the States of the sovereign power of the States to control intrastate commerce in their own way, the residuum of power in these United States as a free country is vested in the people and the people can change the Constitution. I say that it is not only our privilege but our duty to respect and uphold the Constitution of the United States so long as it is written as it is. Here and now let me say that I am as friendly to labor as any person

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who sits in this House, but I believe the laboring man has as big a stake in the Constitution, has as big a stake in the future of this country under that Constitution, as any person whoever he may be or however much he may have.

In this House we frequently hear the statement made by men who claim to be lawyers—and I do not claim to be a constitutional lawyer—"I have not looked into the constitutionality of the bill, I do not know whether it is constitutional or not."

I got to thinking about this, and I spent over half the night reading the decisions the proponents of the bill rely upon to support their contention of constitutionality. It is my honest, conscientious, and sincere opinion that power is vested in this purported authority set up under this act to exercise control of commerce, which power is not limited to interstate commerce or those things directly affecting interstate commerce. For this reason I claim the act is unconstitutional. Without regard to what we may think of the merits of the bill, or whether it produces a good situation or a bad situation, I do not see how any of us can support the bill as it is now drafted, in the light of the Constitution and the Supreme Court decisions thereunder, and under our oaths to support and uphold the Constitution. [Applause.]

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I yield 3 minutes to the gentleman from Oklahoma [Mr. FERGUSON].

Mr. FERGUSON. Mr. Chairman, as a Representative from an agricultural district, I think that when we shall have passed this bill we will have brought about an equality that has been a long time coming. Under the A. A. A. and the amendments thereto passed yesterday, the farmer has an equality in the tariff that he has never had before. Under this bill we shall give labor an equal position with the employer, a position labor has never had before. We have manufacturers' organizations, chambers of commerce, and many different types of organizations that give employers a chance to have agreements, and it is high time that we had a permanent piece of legislation giving to labor the power to bargain collectively and in the open. We hear much talk about the power it will put into the hands of the American Federation of Labor and the power it will put into the hands of agitators. It is my opinion that to give labor clearly and legally the right to organize and do it openly will bring about a situation where the suspicion and hatred that existed when union activities had to be carried on by subterfuge will no longer exist. [Applause.]

Mr. Chairman, I yield back the balance of my time.

Mr. CONNERY. Mr. Chairman, I yield 15 minutes to the gentleman from Virginia [Mr. SMITH].

Mr. SMITH of Virginia. Mr. Chairman, I am opposed to this bill because it is obviously unconstitutional because it forbids the courts of the land to consider the controversies arising under it under the usual rules of evidence and procedure pertaining to other litigations; because it abrogates the right to contract; and because I believe it holds out false hopes that cannot be realized under the present Constitution, and which will lead to strife rather than peace.

It seems hardly necessary to remind anyone that we have recently and forcefully had called to our attention the limitations upon the power of the Congress under the interstate commerce clause.

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We have no earthly power under the Constitution to legislate with respect to labor disputes except those labor disputes which directly affect interstate commerce as so often defined by the Supreme Court.

We have every reason to believe and to know that if we pass a law dealing with labor disputes or any other matter that stands outside of the power of Congress under the interstate commerce clause it will be promptly nullified by the Supreme Court.

The particular clause to which I wish to draw attention is subsection 7 of section 2, on page 7 of the bill.

[9693] This section, as reported from the Labor Committee before the Schechter decision, read as follows:

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce or obstructing the free flow of commerce, of having lead or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

The bill was recommitted to the committee in order that it might be made to conform to that decision. The committee labored and brought forth the following provision as it now appears in the bill:

(7) The term "affecting commerce" means in commerce or burdening or obstructing commerce or the free flow of commerce, and having lead or tending to lead to a labor dispute, burdening or obstructing commerce or the free flow of commerce.

The mere transposition of some of the words in the original bill has brought about nothing more than the difference between tweedledee and tweedledum. The thinly veiled effort to impose upon the Supreme Court a definition of interstate commerce to meet the exigencies of this occasion will not avail.

Nothing new was said in the Schechter case. The Court by a series of decisions running over a period of 150 years has clearly and definitely defined the limitations upon Congress under the interstate-commerce clause. There is a clear line of demarcation running through all of these decisions, and in order to pass a valid law we must remain within the channels so defined, however irksome it may be.

At this point I ask unanimous consent to extend my remarks and append thereto quotations of the Supreme Court on this subject in a number of decisions.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SMITH of Virginia. Mr. Chairman, to my mind it is entirely clear how far we may go and where we must stop. If we do not stop when we reach the stopping place, the act will be declared unconstitutional by the Court and the earnest and untiring efforts of the advocators of this bill will be wasted through their overzealousness.

We cannot change the Constitution by undertaking to define interstate commerce. We are merely fooling ourselves and holding out false hopes to others. Whatever the need may be, however great the urgency may be to find some method to regulate labor disputes by the Congress, it cannot be done except in controversies directly affecting interstate commerce. All Members of the House know that only an infinitesimal percentage of potential labor disputes can be legitimately reached under the interstate-commerce clause.

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Why seek to camouflage the situation with unconstitutional legislation when we all know that the only solution of the problem would be a constitutional amendment? There is ample provision for this method and while many of us will differ as to the propriety of an amendment for this purpose, nevertheless, it is fair issue that can be fought out in the method prescribed by the Constitution. To each State in the Union would be given the opportunity to say whether she desired to adhere to the rights reserved to her under the Constitution, or whether she is willing to surrender more of these rights to the National Government.

Too many of the reserve powers of the States have been taken away by judicial interpretation and other means. I appeal to you not to further strip the States of their police powers in purely local matters by means of legislation of this character forced through under whip and spur of real or fancied emergency.

And to those gentlemen who complain of the limitations imposed upon the Congress by the Supreme Court decisions, may I remind them that those decisions have consistently from the beginning of our Government broadened and enlarged the powers of Congress beyond any measure conceived by the framers of the Constitution. May I remind you that President Madison, who was known as "the father of the Constitution," vetoed the first public-works program for the improvement of rivers and harbors on the grounds that the Constitution did not permit it. And may I remind you that Chief Justice Marshall, in the case of Gibbons against Ogden, revolutionized the whole conception of the interstate-commerce clause by construing it to include not only commerce itself, but the means of transportation by which commerce was carried on. From that time on the Court has continually liberalized the definition of "interstate commerce" to include everything that could honestly be construed as affecting it.

Throughout those interpretations, however, has run a clear line of consistency, namely, that the legislation must deal with subject directly affecting commerce between the States.

First. It includes transportation, communication, and trafficking between citizens of different States.

Second. It includes control over activities in the nature of conspiracies that directly impede or hinder the shipment of goods in interstate commerce.

Third. And it includes control over the shipment of goods and the transportation of persons when the thing itself or the object of the shipment is injurious or against public morals.

I believe that every case that has been decided is brought within these limitations and when it has been sought to go further as is done in this bill, the Supreme Court has uniformly refused to take jurisdiction under the commerce clause.

To illustrate, the cases when the Court has taken jurisdiction under the interstate-commerce clause and when it has refused to take jurisdiction:

First. The Court has refused the use of the channels of interstate commerce in the shipment of liquor, in lottery cases, and white-slavery cases. Why? Because in each of those cases the harmful nature of the transaction itself was regarded as having a direct and deleterious effect upon interstate commerce.

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Second. The Court has taken jurisdiction to prevent boycott and conspiracies formulated for the purpose of preventing the use of certain goods or the products of certain factories. Why? Because in each of these instances the direct object was to prevent the articles from being shipped in interstate commerce, thereby obstructing the free flow.

And in every case the Court has carefully preserved the distinction between manufacture and commerce, taking jurisdiction in the latter and refusing it in the former. It has repeatedly, over and over, said that interstate commerce does not include the manufacture of goods for shipment in interstate commerce, the mining of coal or other minerals for shipment in interstate commerce, or the gathering or preparation of any articles for shipment in interstate commerce, where the article has not begun its journey in interstate commerce or where the transportation has finally terminated and the goods have come to rest for local distribution.

A striking illustration is found in the child-labor cases. There the law prohibited the shipment in interstate commerce of goods manufactured in factories where child labor was employed. The law was intended to remedy a recognized evil. There was no question of its lofty motives or the desirability of correcting the evil, and yet the Supreme Court held that Congress was powerless to deal with the subject under the interstate-commerce clause. Why? Because, although the goods might ultimately be intended for interstate commerce, the articles themselves were harmless and had no direct deleterious effect upon the commerce, and, therefore the manufacture and preparing for shipment of the articles for interstate commerce merely indirectly and remotely affected that commerce.

Now, under this bill, if labor disputes are to be confined as they will be confined, to those questions where interstate commerce is directly involved, there will be practically no labor disputes on which the bill can legitimately operate. Therefore, it must be intended that the bill shall operate on labor disputes over which Congress has no power. I for one, am of the firm conviction that we should not pass bills that are obviously unconstitutional and obviously intended **[9694]** as instrumentalities to obviate and evade the limitations of the Constitution.

For example: We are told that if this bill does not pass promptly, there will be great coal strikes in the country. That strike will not operate directly upon interstate commerce, but upon the mining and production of coal partly in and partly out of interstate commerce.

Repeatedly the Supreme Court has said that we have no power under the interstate-commerce clause to interfere in any way with the mining of coal except to prevent or punish a conspiracy to restrain interstate commerce, although the indirect effect might keep out of the flow of commerce coal that otherwise would be shipped. As this bill does not operate as against employees, any conspiracy or combination to bring about the strike that would prevent the shipment of coal would not be reached by the terms of the bill, and certainly the employers, against whom the bill does operate, could not be reached on a charge of a conspiracy to bring about the strike by not acceding to employees' demands.

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I merely cite the coal situation as an example of practically every other mining and manufacturing industry, because the same situation with respect to interstate commerce appears in practically all of them.

The result, therefore, is that the bill cannot legitimately operate in enough instances to justify the machinery that has to be set up. And, on the other hand, if it is the intention of the proponents of the bill to make it operate in all industry indirectly affecting interstate commerce, then the Supreme Court will unquestionably declare it unconstitutional at the first opportunity.

In the few minutes at my disposal I wish to call attention to those phases of the bill which obliterate the right of individuals to contract and take away from the courts the power to decide these controversies under the usual rules of evidence and procedure.

I refer first to section 10 A, page 14, line 24. In referring to the power of the board "this power shall be exclusive and shall not be affected by any other means of adjustment that has been or may be established by agreement, code, law, or otherwise."

It is conceivable we intend to pass a law which we solemnly proclaim cannot be affected by any future law, and which we further say cannot be affected by the agreement of the contracting parties themselves?

I again call attention in the same section to the language used on page 15, line 21, "in any such procedure the rules of evidence prevailing in courts of law or equity shall not be controlling." I hope that in the discussion of this bill that some of its advocates will inform the Members of the House just what is meant by this language.

Again, on page 18, line 2, the language of the bill once more does violence to the usual rules of evidence and procedure in the courts when it provides that "the findings of the board as to facts, if supported by evidence, shall be conclusive." This language, which does away with the usual rules of evidence, is repeatedly found in the bill.

And again, on page 19, line 24, in dealing with the power of the Federal courts to review the decisions of the board the power of the court is effectively fettered by this language:

> And the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

Let me express the hope that if the bill is to be passed that the House will by amendment, so far as is possible, eliminate the most glaring of its defects.

Ladies and gentlemen of the Committee, my congressional district lies just across the Potomac in Virginia. Ten minutes' drive from the Capitol will bring you among the former homes and environments of many of the outstanding figures who aided in the foundation of our Government and influenced to a wide extent its conception and development.

I hope that each and every one of you, if you have not already done so, will sometime make a trip through the beautiful country of northern Virginia and visit its historic shrines.

As you cross the Potomac, you will be in full view of Arlington Mansion, the home of the immortal Robert E. Lee, who sacrificed wealth and official position to struggle for what he believed to be the reserved powers of the States to secede from the Union. Only a few

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miles away is Mount Vernon, the home of Washington, whose whole life and energies were directed toward the creation and establishment of a stable form of government for this Republic. Only a few miles from there is situated Gunston Hall, the home of George Mason, who gave to America the Bill of Rights. In Loudoun County you will find the home of James Monroe, who laid down the Monroe Doctrine, which has been recognized as a rule of international law for over a century. In the adjoining county of Fauquier you will find Oak Hill, the home of Chief Justice Marshall, who, by his interpretation of the Constitution, gave it life and breath and vigor. Still farther on, in Orange County, you will find the home of James Madison, "the father of the Constitution", and then, in the next county of Albemarle, still in my congressional district, you will find Monticello, the home of Jefferson, author of the Declaration of Independence and the founder of our party.

Those men in their time differed violently, and often personally, as to the construction of the Constitution, the limitations of the powers given to the Federal Government, and the extent of the powers reserved to the States. They differed then just as we differ here today, and were they with us today, they would probably differ as violently as Members of this House differ as to what powers should be exercised by the Federal Government and what powers reserved to the States. They would differ as to whether the Constitution should be amended to meet the changed conditions of the present just as the Members of this House would do. But I believe that every one of you will agree with me, that upon any proposal to evade or circumvent the Constitution to meet exigencies or emergencies, that they would stand as one man in opposition to any effort to obviate the limitations or restrictions of that document except through the orderly process provided for that purpose.

May I say a word now about the Coronado case, a brief extract from which has been read to the Members of the House today? It reminds me somewhat of the old argument that is put up sometimes that the Bible said there is no God. You may take a few words out of the opinion and perhaps draw a conclusion from it. In the first place, there were two Coronado coal cases, one in Two Hundred and Fifty-nine United States Reports and one in Two Hundred and Sixty-eight United States Reports. The gentleman this morning quoted from the last case. The first case is where the principle is laid down and extracts from that case will be found in the extension of my remarks.

In the first decision the Supreme Court laid down the broad principle that it has never varied from one iota in the 150 years of the existence of the Court. That is to say, unless the subject directly affected interstate commerce, unless it is a direct burden upon it or there is a conspiracy to restrain it, this Congress has no power to legislate.

The second case went back again to the Supreme Court on an entirely different set of facts, which were adduced at the second trial, and the Court held in the second Coronado case under the evidence produced that the evidence was strong enough to bring it within the rule laid down by the Court in the former Coronado case.

Mr. GRISWOLD. Will the gentleman yield?

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Mr. SMITH of Virginia. I yield to the gentleman from Indiana.

Mr. GRISWOLD. In the second Coronado case it was held that it did not turn on the conspiracy issue.

Mr. SMITH of Virginia. In the second Coronado case it was held that the facts as proven in the second case were sufficient to bring it within the rule laid hown by the Court in the first Coronado case. Nothing will be found in the decision of the second Coronado case where the Court, by word or by intimation, stated it intended to vary from the principle which it had previously laid down in the other case.

Mr. GRISWOLD. May I call the gentleman's attention to the fact that the second case, as has been contended all [9695] along by gentlemen familiar with the cases, seemingly did not turn on the conspiracy issue.

Mr. MARCANTONIO. Will the gentleman yield?

Mr. SMITH of Virginia. I yield to the gentleman from New York.

Mr. MARCANTONIO. Then the constitutionality of this statute depends entirely on its application. In other words, you cannot say that as this statute stands today it is unconstitutional.

Mr. SMITH of Virginia. I think it may be stated of the proposed measure that it is unconstitutional.

Mr. MARCANTONIO. It depends on the application.

Mr. SMITH of Virginia. When the attempt is made to define interstate commerce as is undertaken in this bill, and define it outside the provisions of the Supreme Court decisions, then an unconstitutional law is being enacted.

The quotations of Supreme Court are as follows:

UNITED MINE WORKERS *v.* CORONADO COAL CO. (259 U. S. 344, 408)

(P. 346, syllabus)

8. Evidence that a union of coal miners belonged to a general association which, as an incident of its object to promote wages, etc., had a general policy to unionize coal mines by strikes, etc., and thus discourage competition of open-shop against union mines in interstate commerce, held not sufficient to prove that a conspiracy of the lesser organization and its members, accompanied by a local strike, to prevent the employment of nonunion miners and the mining of coal at particular mines, was a conspiracy to restrain interstate commerce in violation of the Sherman Act, where the strike and its lawless activities were the affair of the conspirators, explained by local motives, and the normal output of the mines was not enough to have a substantial effect on prices and competition in interstate commerce from which a motive to assist the general policy might be inferred (Pp. 408, 412).

At page 408 the Court said:

What really is shown by the evidence in the case at bar, drawn from discussions and resolutions of conventions and conference, is the stimulation of union leaders to press their unionizing of nonunion mines not only as a direct means of bettering the conditions and wages of their workers, but also as a means of lessening interstate competition for union operators which in turn would lessen the pressure of those operators for reduction of the union scale or their resistance to an increase. The latter is a secondary or ancillary motive whose actuating force in a given case necessarily is dependent on the particular circumstances to which it is sought to make it applicable. If unlawful means had here been used by the national body to unionize mines whose product was important, actually or potentially, in affecting prices in interstate commerce, the evidence in question would clearly tend to show that that body was guilty of an actionable conspiracy under the Antitrust

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Act. This principle is involved in the decision of the case of *Hitchman Coal & Coke Co.* v. *Mitchell* (245 U. S. 229) and is restated in *American Steel Foundries* v. *Tri-City Central Trades Council* (257 U. S. 184). But it is not a permissible interpretation of the evidence in question that it tends to show that the motive indicated thereby actuates every lawless strike of a local and sporadic character, not initiated by the national body but by one of its subordinate subdivisions. The very fact that local strikes are provided for in the union's constitution, and so may not engage the energies or funds of the national body, confirm this view. Such a local case of a lawless strike must stand on its own facts and while these conventions and discussions may reveal a general policy, the circumstances or direct evidence should supply the link between them and the local situation to make an unlawful local strike, not initiated or financed by the main organization, a step in an actionable conspiracy to restrain the freedom of interstate commerce which the Antitrust Act was intended to protect.

This case is very different from *Loewe* v. *Lawlor* (208 U. S. 274). There the gist of the charge held to be a violation of the Antitrust Act was the effort of the defendants, members of a trades union, by a boycott against a manufacturer of hats to destroy his interstate sales in hats. The direct object of attack was interstate commerce.

So, too, it differs from *Eastern States Retail Lumber Dealers' Association* v. *United States* (234 U. S. 600), where the interstate retail trade of wholesale lumbermen with consumers was restrained by a combination of retail dealers by an agreement among the latter to blacklist or boycott any wholesaler engaged in such retail trade. It was the commerce itself which was the object of the conspiracy. In *United States* v. *Patten* (226 U. S. 525), running a corner in cotton in New York City by which the defendants were conspiring to obtain control of the available supply and to enhance the price to all buyers in every market of the country was held to be a conspiracy to restrain interstate trade because cotton was the subject of interstate trade and such control would directly and materially impede and burden the due course of trade among the States and inflict upon the public the injuries which the Antitrust Act was designed to prevent. Although running the corner was not interstate commerce, the necessary effect of the control of the available supply would be to obstruct and restrain interstate commerce, and so the conspirators were charged with the intent to restrain. The difference between the Patten case and that of *Ware & Leland* v. *Mobile County* (209 U. S. 405) illustrates a distinction to be drawn in cases which do not involve interstate commerce intrinsically but which may or may not be regarded as affecting interstate commerce so directly as to be within the Federal regulatory power. In the Ware & Leland case, the question was whether a State could tax the business of a broker dealing in contracts for the future delivery of cotton where there was no obligation to ship from one State to another. The tax was sustained and dealing in cotton futures was held not to be of interstate commerce, and yet thereafter such dealings in cotton futures, as were alleged in the Patten case, where they were part of a conspiracy to bring the entire cotton trade within its influence, were held to be in restraint of interstate commerce. And so in the case at bar, coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce unless the obstruction to mining is intended to restrain commerce in it or has necessarily such a direct, material, and substantial effect to restrain it that the intent reasonably must be inferred. (See also *Coronado Coal Co.* v. *United Mine Workers* (268 U. S. 295).)

KIDD *v.* PEARSON (128 U. S. 1, 20)

No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce, and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this court in *County of Mobile* v. *Kimball* (102 U. S. 691, 702), is as follows: "Commerce with foreign countries, and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities." If it be held that the term includes the regulation of

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all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest and the cotton planter of the South plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests —interests which in their nature are and must be local in all the details of their successful management.

It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme, when we regard the multitudinous affairs involved and the almost infinite variety of their minute details.

It was said by Chief Justice Marshall that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several States was to insure uniformity of regulation against conflicting and discriminating State legislation. (See also *County of Mobile* v. *Kimball*, supra, at page 697.)

This being true, how can it further that object so to interpret the constitutional provision as to place upon Congress the obligation to exercise the supervisory powers just indicted? The demands of such a supervision would require not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement toward the establishment of rules of production in this vast country, with its many different climates and opportunities, could only be at the sacrifice of the peculiar advantages of a large part of the localities in it, if not of every one of them. On the other hand, any movement toward the local, detailed, and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question. Nor this alone. Even in the exercise of the power contended for Congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. These instances would be almost infinite, as we have seen; but still there would always remain the possibility, and often it would be the case that the producer contemplated a domestic market. In that case the supervisory power must be executed by the State; and the interminable trouble would be presented, that whether the one power or the other should exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the State governments and more provocative of conflicts between the general Government and the States and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine.

[9696] HAMMER *v.* DAGENHART, 247 U. S. 251, 269, 274 (OPINION BY JUSTICE DAY)

(P. 251)

The act of September 1, 1916 (c. 432, 39 Stat. 675), prohibits transportation in interstate commerce of goods made at a factory in which, within 30 days prior to their removal therefrom, children under the age of 14 years have been employed or permitted to work, or children between the ages of 14 and 16 years have been employed or permitted to work more than 8 hours in any day, or more than 6 days in any week, or after the hour of 7 p. m. or before the hour of 6 a. m. Held, unconstitutional as exceeding the commerce power of Congress and invading the powers reserved to the States.

The power to regulate interstate commerce is the power to prescribe the rule by which the commerce is to be governed; in other words, to control the means by which it is carried on.

The court has never sustained a right to exclude save in cases where the character of the particular things excluded was such as to bring them peculiarly within the governmental authority of the State or Nation and render their exclusion, in effect, but a regulation of interstate transportation, necessary to prevent the accomplishment through that means of the evils inherent in them.

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The manufacture of goods is not commerce, nor do the facts that they are intended for, and are afterwards shipped in, interstate commerce make their production a part of that commerce subject to the control of Congress.

The power to regulate interstate commerce was not intended as a means of enabling Congress to equalize the economic conditions in the States for the prevention of unfair competition among them by forbidding the interstate transportation of goods made under conditions which Congress deems productive of unfairness.

It was not intended as an authority to Congress to control the States in the exercise of their police power over local trade and manufacture, always existing and expressly reserved to them by the tenth amendment.

At page 269 the Court said:

The controlling question for decision is, Is it within the authority of the Congress, in regulating commerce among the States, to prohibit the transportation in interstate commerce of manufactured goods, the product of a factory in which, within 30 days prior to their removal therefrom, children under the age of 14 have been employed or permitted to work, or children between the ages of 14 or 16 years, have been employed or permitted to work more than 8 hours in any day or more than 6 days in any week, or after the hour of 7 p. m. or before the hour of 6 a. m.?

In *Gibbons* v. *Ogden* (9 Wheat. 1), Justice Marshall, speaking for this Court and defining the extent and nature of the commerce power, said: "It is the power" to regulate; that is, to prescribe the rule by which commerce is to be governed." In other words, the power is one to control the means by which commerce is carried on, which is directly the contrary of the assumed right to forbid commerce from moving and thus destroy it as to particular commodities.

* * * * * * *

"The power conferred is to regulate, and the very terms of the grant would seem to repel the contention that only prohibition of movement in interstate commerce was embraced. And the cogency of this is manifest, since if the doctrine were applied to those manifold and important subjects of interstate commerce as to which Congress from the beginning has regulated, not prohibited, the existence of government under the Constitution would be no longer possible."

In each of these instances the use of interstate transportation was necessary to the accomplishment of harmful results. In other words, although the power over interstate transportation was to regulate, that could only be accomplished by prohibiting the use of the facilities of interstate commerce to effect the evil intended.

This element is wanting in the present case. The thing intended to be accomplished by this statute is the denial of the facilities of interstate commerce to those manufacturers in the States who employ children within the prohibited ages. The act in its effect does not regulate transportation among the States, but aims to standardize the ages at which children may be employed in mining and manufacturing within the States. The goods shipped are of themselves harmless. The act permits them to be freely shipped after 30 days from the time of their removal from the factory. When offered for shipment and before transportation begins, the labor of their production is over, and the mere fact that they were intended for interstate commerce transportation does not make their production subject to Federal control under the commerce power.

Commerce "consists of intercourse and traffic * * * and includes the transportation of persons and property, as well as the purchase, sale, and exchange of commodities." The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterward shipped or used in interstate commerce, make their production a part thereof (*Delaware, Lackawanna & Western R. R. Co.* v. *Yurkonis*, 238 U. S. 439).

Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation.

"When the commerce begins is determined not by the character of the commodity nor by the intention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another State" (Mr. Justice Jackson, in re Green, 52 Fed. Rept. 113). This principle has been recognized often in this court (*Coe* v. *Errol*, 115 U. S. 517; *Bacon* v. *Illinois*, 227 U. S. 504, and cases cited). If it were otherwise, all manu-

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facture intended for interstate shipment would be brought under Federal contro to the practical exclusion of the authority of the States, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the States (*Kidd* v. *Pearson,* 128 U. S. 1, 21).

It is further contended that the authority of Congress may be exerted to control interstate commerce in the shipment of child-made goods because of the effect of the circulation of such goods in other States where the evil of this class of labor has been recognized by local legislation and the right to thus employ child labor has been more rigorously restrained than in the State of production. In other words, that the unfair competition, thus engendered, may be controlled by closing the channels of interstate commerce to manufacturers in those States where the local laws do not meet what Congress deems to be the more just standard of other States.

There is no power vested in Congress to require the State to exercise their police power so as to prevent possible unfair competition. Many causes may cooperate to give one State, by reason of local laws or conditions, an economic advantage over others. The commerce clause was not intended to give to Congress a general authority to equalize such conditions. In some of the States laws have been passed fixing minimum wages for women, in others the local law regulates the hours of labor of women in various employments. Business done in such States may be at an economic disadvantage when compared with States which have no such regulations. Surely this fact does not give Congress the power to deny transportation in interstate commerce to those who carry on business where the hours of labor and the rate of compensation for women have not been fixed by a standard in use in other States and approved by Congress.

The grant of power to Congress over the subject of interstate commerce was to enable it to regulate such commerce, and not to give it authority to control the States in their exercise of the police power over local trade and manufacture.

CRESCENT COTTON OIL CO. *v.* MISSISSIPPI (257 U. S. 129)

Plaintiff in error, a Tennessee corporation, engaged in the manufacture of cottonseed oil in that State, finding it impracticable to carry on the business successfully when purchasing its supply of cottonseed from ginners or from brokers, acquired and operated cotton gins in Mississippi and other States, where it ginned cotton from cotton growers, purchased from them the seed thus separated from the fiber, and then shipped it on to its Tennessee factory. Mississippi passed a law forbidding corporations interested in the manufacture of cottonseed oil from owning or operating cotton gins, except of a prescribed capacity and in the city or town where their oil plants were located.

Held: (1) That since the ginning was merely manufacture, and the seeds were not in interstate commerce until purchased and committed to a carrier, the gins were not instrumentalities of interstate commerce and the prohibition of their operation did not infringe the company's rights under the commerce clause (p. 135).

The Court, on page 136, said:

The separation of the seed from the fiber of the cotton, which is accomplished by the use of the cotton gin, is a short but important step in the manufacture of both the seed and the fiber into useful articles of commerce, but that manufacture is not commerce was held in *Kidd* v. *Pearson* (128 U. S. 1, 20, 21); *United States* v. *E. C. Knight Co.* (156 U. S. 1, 12, 13); *Capital City Dairy Co.* v. *Ohio* (183 U. S. 238, 245); *McCluskey* v. *Marysville & Northern Ry. Co.* (243 U. S. 36, 38); *Hammer* v. *Dagenhart* (247 U. S. 251, 252); and in *Arkadelphia Milling Co.* v. *St. Louis Southwestern Ry. Co.* (249 U. S. 134, 151, 152). And the fact of itself that an article when in the process of manufacture is intended for export to another State does not render it an article of interstate commerce (*Coe* v. *Errol* (116 U. S. 517) and *New York Central R. R. Co.* v. *Mohoey* (252 U. S. 152, 155)). When the ginning is completed the operator of the gin is free to purchase the seed or not, and if it is purchased to store it in Mississippi, indefinitely or to sell or use it in that State or to ship it out of the State for use in another; and, under the cases cited, it is only in this last case and after the seed has been committed to a carrier for interstate transport that it passes from the regulatory power of the State into interstate commerce and under the national power.

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PUBLIC UTILITIES COMMISSION *v.* LANDON (249 U. S. 236)

While the piping of natural gas from State to State, and its sale and delivery to independent local gas companies, is interstate commerce, the retailing of the gas by the local companies to their consumers is intrastate commerce and is not a continuation of such interstate commerce, even though their mains are connected permanently with those of their vendor and their vendors agreed compensation is a definite proportion of their gross receipts. Id.

The Court, on page 244, said:

The court below held the business carried on by the receivers—transportation of natural gas and its disposition and sale to consumers through the distributing companies—was interstate commerce of a national character; that the commissions' actions interfered with establishment and maintenance of reasonable sale rates and thereby burdened interstate commerce and took the receivers' property without due process of law; that the original supply con-[9697]tracts were not binding upon the receivers. And it accordingly enjoined the commissions, their members, the attorneys general of both States, the various municipalities and the distributing companies from interfering with establishment of such reasonable and compensatory rates as the court might approve. We think the trial court properly overruled the objections offered to its jurisdiction and nothing need be added to the reasons which it gave (234 Fed. Rep. 152, 155). But we cannot agree with its conclusions that local companies in distributing and selling gas to their customers acted as mere agents, immediate representatives or instrumentalities of the receivers and as such carried on without interruption interstate commerce set in motion by them.

That the transportation of gas through pipe lines from one State to another is interstate commerce may not be doubted. Also, it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the State (*American Express Co.* v. *Iowa* (19) U. S. 133, 143), *Oklahoma* v. *Kansas Natural Gas Co.* (221 U. S. 229), *Haskell* v. *Kansas Natural Gas Co.* (224 U. S. 217)).

But in no proper sense can it be said, under the facts here disclosed, that sale and delivery of gas to their customers at burner tips by the local companies operating under special franchises constituted any part of interstate commerce. The companies received supplies which had moved in such commerce and then disposed thereof at retail in due course of their own local business. Payment to the receivers of sums amounting to two-thirds of the product of these sales did not make them integral parts of their interstate business. In fact, they lacked authority to engage by agent or otherwise the retail transactions carried on by the local companies. Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods (*Rearick* v. *Pennsylvania*, 203 U. S. 507, 512; *The Pipe Line cases*, 234 U. S. 548, 560). The thing which the receivers actually did was to deliver supplies to local companies. Exercising franchise rights, the latter distributed and sold the commodity so obtained upon their own account and paid the receivers what amounted to two-thirds of their receipts from customers. Interstate movement ended when the gas passed into local mains. The court below erroneously adopted the contrary view and upon it rested the conclusion that the public commissions were interfering with establishment of compensatory rates by the receivers in violation of their rights under the fourteenth amendment.

INDUSTRIAL ASSOCIATION *v.* UNITED STATES (264 U. S. 64, 78, 83)

(P. 64)

For the purpose of freeing the local building industry from domination by trade unions, numerous building contractors and dealers in building material in San Francisco combined to establish, in effect, the "open-shop" plan of employment by requiring builders who desired building materials of certain specified kinds to obtain permits therefor from a builders' exchange, and by refusing such permits to those who did not support the plan. Held that the combination did not violate the Sherman Antitrust Act, because (1) its object was confined to a purely local matter and interference with interstate commerce was neither intended nor desired.

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(P. 77)

(2) The materials for which permits were required were all produced in California, except one kind as to which permits were required only after they had entered the State and had become commingled with the common mass of local property, so that their interstate movement and commercial status had ended.

At page 78, the Court said:

It is true, however, that plaster, in large measure produced in other States and shipped into California, was on the list; but the evidence is that the permit requirement was confined to such plaster as previously had been brought into the State and commingled with the common mass of local property, and in respect of which, therefore, the interstate movement and the interstate commercial status had ended. This situation is utterly unlike that presented in the Swift case, supra, where the only interruption of the interstate transit of livestock being that necessary to find a purchaser at the stockyards, and this the usual and constantly recurring course, it has held (pp. 398–399) that there was thus constituted "a current of commerce among the States," of which the purchase was but a part and incident. The same is true of *Stafford* v. *Wallace* (258 U. S. 495, 516) which likewise dealt with the interstate shipment and sale of livestock. The stockyards to which such livestock was consigned and delivered are there described not as a place of rest or final destination, but as "a throat through which the current flows," and the sale as only an incident which does not stop the flow but merely changes the private interest in the subject of the current without interfering with its continuity. In *Binderup* v. *Pathe Exchange* (263 U. S. 291, [illegible], a commodity produced in one State was consigned to a local agency of the producer in another, not as a consummation of the transit, but for delivery to the customer. This Court held that the intermediate delivery did not end, and was not intended to end, the movement of the commodity, but merely halted it "as a convenient step in the process of getting it to its final destination."

But here the delivery of the plaster to the local representative or dealer was the closing incident of the interstate movement and ended the authority of the Federal Government under the commerce clause of the Constitution. What next was done with it was the result of new and independent arrangements.

The Government relies with much confidence upon *Loewe* v. *Lawlor* (208 U. S. 274) and *Duplex Co.* v. *Deering* (254 U. S. 443); but the facts there and the facts here were entirely different. Both cases, like the Coronado and the United Leather Workers cases and the present case, arose out of labor disputes; but in the former cases, unlike the latter ones, the object of the labor organizations was sought to be attained by a country-wide boycott of the employer's goods for the direct purpose of preventing their sale and transportation in interstate commerce in order to force a compliance with their demands. The four cases and the one here, considered together, clearly illustrate the vital difference, under the Sherman Act, between a direct, substantial, and intentional interference with interstate commerce and an interference which is incidental, indirect, remote, and outside the purposes of those causing it.

HUGHES BROTHERS *v.* MINNESOTA (272 U. S. 469–470)

1. A State cannot tax personal property, which is in actual transit in interstate commerce (p. 471).

2. Pursuant to a contract of sale, logs cut in Minnesota by the vendors were floated by river to Lake Superior, there loaded on the vendee's vessels and transported to their destination in Michigan. Part of the price was paid when provisional inspection and estimates of quantity, etc., were made by the vendee at river landings, another part when the logs reached booms at or near the place of their transference to the vessels, and the remainder at destination. The wood was scaled by representatives of both parties when stowed in the vessels and at destination. Liability insurance was carried by the vendor, and the cargo insurance by the vendee. The vendor warranted title.

Held, that the logs had begun their continuous interstate journey with the beginning of their drive down the river, not with their subsequent transfer to the vessels (pp. 473, 475).

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The Court, through Chief Justice Taft, on page 475, said:

The conclusion in cases like this must be determined from the various circumstances. Mere intention by the owner ultimately to send the logs out of the State does not put them in interstate commerce, nor does preparatory gathering, for that purpose, at a depot. It must appear that the movement for another State has actually begun and is going on. Solution is easy when the shipment has been delivered to a carrier for a destination in another State. It is much more difficult when the owner retains complete control of the transportation and can change his mind and divert the delivery from the intended instertate destination, as in the Champlain Co. case. The character of the shipment in such a case depends upon all the evidential circumstances looking to what the owner has done in the preparation for the journey and in carrying it out.

BINDERUP *v.* PATHE EXCHANGE (263 U. S. 241)

New York manufacturers and distributors of motion-picture films, in the regular course of their business, shipped films from that State to Nebraska and delivered them there to a Nebraska resident, as lessee under agreements, which by their terms were to be deemed and construed as New York contracts, and which licensed and obliged the lessee to exhibit the pictures, for specified periods, in moving-picture theaters, reserved rentals to the lessors and provided for ultimate reshipment by the lessee on advices to be given by them. Held, that the business of the lessors, and their transactions with the lessee, were interstate commerce, notwithstanding that, in accordance with the contracts, the films were delivered to him through agencies of the lessors in Nebraska to which they were first consigned and transported.

The Court, through Chief Justice Sutherland, on page 309 said:

1. The film contracts were between residents of different States and contemplated the leasing by one to the other of a commodity manufactured in one State and transported to and used in another. The business of the distributors of which the arrangement with the exhibitor here was an instance was clearly interstate. It consisted of manufacturing the commodity in one State, finding customers for it in other States, making contracts of lease with them, and transporting the commodity leased from the State of manufacture into the State of the lessees. If the commodity were consigned directly to the lessees, the interstate character of the commerce throughout would not be disputed. Does the circumstance that in the course of the process the commodity is consigned to a local agency of the distributors, to be by that agency held until delivery to the lessee in the same State, put an end to the interstate character of the transaction and transform it into one purely intrastate? We think not. The intermediate delivery to the agency did not end and was not intended to end the movement of the commodity. It was merely halted as a convenient step in the process of getting it to its final destination. The general rule is that where transportation has acquired an interstate character "it continues at least until the load reaches the point where the parties originally intended that the movement should finally end" (*Illinois Central R. R. Co.* v. *Louisiana R. R. Comm.* (236 U. S. 157, 163). And see *Western Union Tel. Co.* v. *Foster* (247 U. S. 105, 113); *Western Oil Refining Co.* v. *Lipscomb* (244 U. S. 346, 349)).

In *Swift & Co.* v. *United States* (196 U. S. 375, 398) it was held that where cattle were sent for sale from a place in one State, with the expectation that the transit would end after purchase in another State, the only interruption being that necessary to find a purchaser at the stockyards, and this was a typical, constantly **[9698]** recurring course, the whole transaction was one in interstate commerce and the purchase a part and incident of it. It further appeared in that case that Swift & Co. were also engaged in shipping fresh meats to their respective agents at the principal markets in other cities for sale by such agents in those markets to dealers and consumers; and these sales were held to be part of the interstate transaction upon the ground "that the same things which are sent to agents are sold by them, and * * * some, at least, of the sales are of the original packages. Moreover, the sales are by persons in one State to persons in another." In the same case in the courts below, 122 Fed. 529, 533, upon this branch of the case, it is said:

"I think the same is true of meat sent to agents, and sold from their stores. The transaction in such case, in reality, is between the purchaser and the agents'

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principal. The agents represent the principal at the place where the exchange takes place; but the transaction, as a commercial entity, includes the principal, and includes him as dealing from his place of business."

The most recent expression of this Court is in *Stafford* v. *Wallace* (258 U. S. 495, 516), where, after describing the process by which livestock are transported to the stockyards and thence to the purchasers, it is said:

"Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character. The commission men are essential in making the sales, without which the flow of the current would be obstructed, and this whether they are made to packers or dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not in this aspect merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with but, on the contrary, being indispensable to its continuity."

The transactions here are essentially the same as those involved in the foregoing cases, substituting the word "film" for the word "livestock" or "cattle" or "meat." Whatever difference exists is of degree and not in character.

UNITED STATES *v.* E. C. KNIGHT CO. (156 U. S. P. 1)

The American Sugar Refining Co., a corporation existing under the laws of the State of New Jersey, being in control of a large majority of the manufactories of refined sugar in the United States, acquired, through the purchase of stock in four Philadelphia refineries, such disposition over those manufactories throughout the United States as gave it a practical monopoly of the business. Held, that the result of the transaction was the creation of a monopoly in the manufacture of a necessary of life, which could not be suppressed under the provisions of the act of July 2, 1890 (ch. 647, 26 Stat. 209), "to protect trade and commerce against unlawful restraints and monopolies" in the mode attempted in this suit, and that the acquisition of Philadelphia refineries by a New Jersey corporation, and the business of sugar refining in Pennsylvania, bear no direct relation to commerce between the States or with foreign nations.

The Court, through Chief Justice Fuller, on page 12, said:

The argument is that the power to control the manufacture of refined sugar is a monopoly over a necessary of life, to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable, and that, therefore, the general government in the exercise of the power to regulate commerce may repress such monopoly directly and set aside the instruments which have created it. But this argument cannot be confined to necessaries of life merely, and must include all articles of general consumption. Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense, and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and it is not a part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever that comes within the rules by which commerce is governed or whenever the transaction is itself a monopoly of commerce.

[Here the gavel fell.]

Mr. WELCH. Mr. Chairman, I yield 15 minutes to the gentleman from New York [Mr. MARCANTONIO].

Mr. MARCANTONIO. Mr. Chairman, I am going to endeavor in my time to explain this bill to the best of my limited ability and then attempt to deal with some of the controversial features which have been raised here this afternoon.

The first section of the bill defines the policies and the findings of the bill. That in and of itself, while of great importance from the standpoint of economic theory and philosophy, is not very important from the standpoint of legislation.

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The second section deals with definitions and the important definitions which have been challenged here are found in subsection 6 of section 2, which reads as follows:

(6) The term "commerce" means trade, traffic, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

I respectfully submit that this language does not in any manner conflict with the definition of "interstate" as defined in the decision in the Schechter case. There is not a single word in this language which conflicts with the definition of "interstate" as we find it in the Constitution or in any of the statutes.

Subsection 7 reads as follows:

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led, or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

If this particular definition is to be interpreted by a board to be created under this bill so as to violate the interstate definition as handed down in the decision in the Schechter case, the Supreme Court will declare it unconstitutional; but what we are seeking to do is to have each and every case as it is presented stand on its own merits. That has been the practice with every labor case that we have had thus far. Every case as it comes up will stand on its own merits. The question will be asked: "Does the application of the law in this case violate the interstate-commerce definition as handed down in the Schechter case?" I doubt whether any constitutional lawyer can say that the term "affecting commerce" as defined in subsection 7 of section 2 is in and of itself unconstitutional. What we are trying to do here is to attempt to guarantee certain rights to labor under language which is constitutional, and if tomorrow the application of this statute in certain cases may be unconstitutional, at the same time we would preserve those rights in cases where the application of the statute would be deemed to be constitutional; but to say that such terminology as the term "affecting commerce" or as the term "commerce" as used in this bill is in and of itself in direct conflict with the definition of interstate commerce handed down in the Schechter case I think is very far-fetched, and, as a matter of fact, I believe the motive behind such argument is to defeat the great principles in the bill rather than to argue the strict constitutionality, purposes, and scope of this bill.

Section 3 creates a National Labor Relations Board, which is to be composed of three members, who shall be appointed by the President. Their salaries shall be $10,000 a year and any member of the board may be removed by the President upon notice and hearing for neglect of duty or malfeasance in office, but for no other cause.

Then, also, a committee amendment changes the Senate bill and attempts to place this board under the Department of Labor. I have filed a minority report on this subject insisting that the board be independent, and I shall discuss that question at the proper time when the committee amendment is offered.

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The important sections of this bill are sections 7, 8, 9, and 10.

Section 7 does what? Up to the present time there is not a Member in this House who can deny that labor has a perfect right by going on the economic battle front, by going out on strike, to guarantee for itself the right of collective bargaining. This right which labor has, no one has dared to take away from it during the past 10 years and no one challenges it. Now, since labor has this right and labor can obtain this right only on the economic battle front by strife and by strike, by labor disputes and labor struggles which disrupt the economic stability of an industry or of a community, what can the objection be to having this right which labor can acquire on the economic battlefield placed in the law, and thus legislate for labor a bill of rights so that labor can exercise these rights by going [9699] into a court of equity through the medium of a labor board and having these rights preserved, respected, and vindicated?

What is the objection to section 7 that is being raised here? Section 7 states:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Everyone who has argued against this bill this morning has stated, "I believe in the right of collective bargaining." If he believes in the right of collective bargaining, why does he challenge section 7, which asserts that labor has the right of collective bargaining?

The next section is section 8 and the purpose of section 8 is to enforce and to clarify the right of collective bargaining and to prevent any practices which would nullify that right which we are all willing to give labor under section 7, and what are these things? The provision states:

> It shall be an unfair labor practice for an employer—
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

If you have no quarrel with section 7, certainly you cannot have any quarrel with subdivision (1) of section 8.

Then under subdivision (2) the employer is prevented from doing what? He is prevented from dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it.

> *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

Mr. TABER. Mr. Chairman, will the gentleman yield?

Mr. MARCANTONIO. I yield to the distinguished gentleman from New York.

Mr. TABER. I should like to have the gentleman tell the Committee whether his understanding of paragraph (2) of section 8 is that the employer would not be allowed to consult with his employees directly without this exception.

Mr. MARCANTONIO. Oh, no; this exception guarantees the employer the right to consult with his employees.

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Mr. CONNERY. Mr. Chairman, will the gentleman yield?

Mr. MARCANTONIO. I yield.

Mr. CONNERY. May I say to my friend from New York that the purpose of that provision is that under the provisions of the bill without such an amendment an employer would be guilty of an unfair labor practice on the ground he was financing his employees if he paid them on company time and then allowed them to come in on company time and discuss matters relative to wages or anything else. So this is to take care of his interests and protect him from an unfair labor practice.

Mr. BEAM. Mr. Chairman, will the gentleman yield?

Mr. MARCANTONIO. I yield.

Mr. BEAM. A great many of these so-called "industries" have what they call their company unions or company associations or employees' associations and I would be very much interested in having the gentleman state just how these so-called "company unions" will be affected by this proposed legislation, if it is enacted.

Mr. MARCANTONIO. There is nothing in this bill which will affect the existence of a company union. All this bill provides is that it shall be an unfair labor practice to have such company union dominated by the employer, and if we believe in collective bargaining, as we all say we do, then I submit that we have a proper right to prevent an employer from taking a union over or forming one and dominating such union so that when they sit on opposite sides of the table, there is not collective bargaining, but there is only one-sided bargaining—the employer bargaining with himself. This is what we are trying to prevent. A company union, unless these unfair labor practices are engaged in, would have the right to exist under this bill and if in a particular unit, as defined by the labor board, the company union has the majority, they will elect their representatives who will deal with the employer, so that the company union will have just as much right as any other union would have that had a majority under such conditions. However, such union must not be an employer-dominated union.

Mr. CONNERY. Mr. Chairman, will the gentleman yield?

Mr. MARCANTONIO. I yield.

Mr. CONNERY. The gentleman has stated the matter very succintly, but the actual result of the passage of this bill will mean the elimination of company unions, not by force, but because the workers when they have the opportunity to pick their own union without coercion will not pick a company union.

Mr. MARCANTONIO. Exactly; but what we are doing here is we are trying to eliminate the unfair labor practice of having the employer dominate the union and finance such union and control such union; and once we eliminate the unfair labor practices, you cannot have an employer-dominated company union. A company union incidentally is synonymous with an employer-dominated union. Once you remove employer control your company union becomes an honest union or ceases to exist.

Mr. COX. Mr. Chairman, will the gentleman yield?

Mr. MARCANTONIO. I yield to the gentleman from Georgia.

Mr. COX. In the consideration of this measure would the gentleman be satisfied with the adoption of the principle of collective bargaining?

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Mr. MARCANTONIO. That is the purpose of this measure, but at the same time may I say to the gentleman that the mere enunciation of the principle of collective bargaining is meaningless unless we eliminate the unfair labor practices which destroy the principle of collective bargaining. Merely stating that the employees shall have the right of collective bargaining and then not eliminating the unfair practices, collective bargaining becomes a mere name and a sham. This bill seeks to eliminate unfair labor practices and hence insure collective bargaining.

Mr. Cox. Would the gentleman be satisfied with the elimination of unfair practices and the adoption of that principle of collective bargaining?

Mr. MARCANTONIO. No; may I say in answer to the gentleman, that besides the elimination of unfair labor practices we ought to have the principle of majority representation, and for the simple reason that there cannot be any collective bargaining unless it is based on majority representation. This bill provides for majority representation.

Mr. Cox. Would the gentleman be satisfied with that included?

Mr. MARCANTONIO. Certainly.

Mr. Cox. The gentleman recognizes and accepts as correct the controlling decision of the Court in the Schechter case, and there is no purpose in the bill in any way to circumvent the effect of that decision?

Mr. MARCANTONIO. That is correct. There is no attempt here to circumvent the Supreme Court decision.

Mr. Cox. Is there not an effort here through legislative definition, to push further Federal control beyond the point fixed by the Supreme Court as marking the limit of congressional power? Let me put the question in another way. Is not the main purpose of this bill to extend Federal control through the use of the commerce power of the Constitution by legislative definition and otherwise, to the point of taking out of State control that which has heretofore been regarded as a purely domestic activity?

Mr. MARCANTONIO. Not necessarily; that is not the situation at all. We are trying to use whatever power Congress has under the commerce clause. The language of the bill is constitutional. Only when its application would be contrary to the definition of "interstate" in the Schechter case would it be declared unconstitutional. Each case would stand on its own state of facts.

I am sorry I have not the time to further elaborate on this point. It is a very interesting one. A great deal is being said today about liberty. The opponents of this bill talk about liberty of the employers to do this, and the liberty of the employers to do that. How about the liberty of the **[9700]** worker? Unless Congress protects the workers what liberty have they? Liberty to be enslaved, liberty to be crucified under the spread-out system, liberty to be worked to death under the speed-up system, the liberty to work at charity wages, the liberty to work long hours. So far as I am concerned, the present laissez faire policy which we have followed in reference to labor has produced a situation which can be described in the words of Anatole France, when he said: "The law in its majestic equality forbids the rich as well as the poor to sleep under bridges, beg on the streets, and steal their bread from the shop windows."

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This bill should pass. It will not settle the capital-and-labor problem, but it is a great step toward a Magna Carta for American labor. [Applause.]

Mr. BLANTON. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD and to insert therein certain excerpts from the bill and other data to which I wish to refer.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. BLANTON. Mr. Chairman, the gentleman from Virginia [Mr. SMITH] has made my speech. He has made the kind of a speech that I imagine one of the greatest constitutional lawyers who ever served here from Virginia during our time would have made if he were here at this time. I refer to our former distinguished colleague, Hon. Henry St. George Tucker, who at one time was chairman of the American Bar Association. The gentleman from Virginia [Mr. SMITH] made the same kind of a speech that Mr. Tucker would have made upon this subject.

I am one of the close personal friends of the distinguished gentleman from Massachusetts [Mr. CONNERY], the able chairman of this committee, who is the author of this bill. He is honest, sincere, energetic, efficient, and thoroughly conscientious. During our long years of association here I have learned to have for him great respect, high regard, and deep affection. There is nothing that I have that he could not get personally. If he needed it and I could help him by doing so, I would wade through snow from here as far as I could go to help him. That is how much I think of him, but I differ with him in respect to this bill.

Mr. CONNERY. And I want to say that I have the same affection for the gentleman from Texas, and whether he differs with me or not, that is his own private affair.

Mr. BLANTON. When I was a young lawyer my best client was Mr. Charles M. Cauble, of Albany, Shackelford County, Tex. He was a big cattleman. After trying a number of cases for him he began to employ me by the year.

Mr. EKWALL. At how much?

Mr. BLANTON. Before I stopped, it was about what I earn in Congress, counting the fees for each case plus the retainer he was paying me by the year. He had business not only all over Texas but also in Mexico, New Mexico, Colorado, Kansas, Wyoming, Montana, and the Dakotas, with cattle being fed all over the country, and leased ranches everywhere. He was constantly shipping whole trainloads of cattle. At one time I represented him in about 50 different cases pending in courts.

I remember the first big contract that I ever drew for him and it is a wonder that it did not cause me to get fired. He had bought a big ranch and a large number of cattle, horses, and other livestock, and some grazing leases in different places, and he employed me to draw the contract covering his purchase. The owner, who was selling, to my surprise did not have a lawyer. I was so enthused in looking after the interest of my client and in seeing that every feature of that long contract involving property of great value protected my client in every particular that I drew him up what I thought was an ideal contract to protect him. I knew my client was safe but I neglected

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to think about the rights of the seller. Everything went along nicely until the time came for delivery, and for the contract to be executed.

Then the man from whom my client bought did not comply with the terms of the contract and it was necessary to go into court to enforce its provisions. To my surprise then the other man appeared with his lawyer and his defense was that the contract was a unilateral contract, that it was one-sided, and was so drawn that his client did not have any rights at all, and therefore was not enforceable in court. To my surprise the court set my ideal contract aside, and annulled it, and left me and my client up in the air. Then I learned what a unilateral contract was, a one-sided affair, worthless and unenforceable in the courts of the land. And I have never forgotten that valuable lesson.

Mr. Chairman, the bill we have before us here, controlling the rights of all employers and employees, is a unilateral bill, with the rights of all employers left out of it. Only the rights of employees are protected. It is one-sided.

Mr. BEITER. Mr. Chairman, will the gentleman yield?

Mr. BLANTON. I am sorry I cannot yield, as my time is limited.

Mr. BEITER. Only to ask the gentleman whether he gave his client back his money.

Mr. BLANTON. I should have given it back, but that is the only case of his I ever lost in court, and I represented him for a number of years. Charley Cauble was the most generous and best client I ever had throughout all of the years of my law practice. That unilateral contract taught me something, and I found out then that when you want to draw a contract between individuals you must see to it that just treatment is accorded to both of the contracting parties. When you pass a law in Congress that affects the rights of two different classes of people, you must see to it that the right of both sides are considered and that they are given equal rights under the law.

Is there any provision in this bill that gives any employer of labor any rights? If there is, please point it out. I have read these 25 pages from cover to cover and I cannot find a single sentence in the bill that gives any right whatever to an employer of labor. It takes from employers all of their inherent rights.

To have employees in the country, you must have employers. Whenever you pass a law that puts employers out of business you are putting employees out of jobs, and you are acting against the best interest of the employees of the country. You must give the employers their inherent rights guaranteed by our Constitution.

The bill you have before you here this evening is a bill that will put more small businesses out of business than anything else that Congress has ever done in the last 50 years. You are going to continue and enhance the depression that has been afflicting our country for so many years. You have provisions in this bill that will be most expensive. The members of the board draw $10,000 a year each, plus traveling expenses and subsistence allowances. There is a blanket provision here that they can appoint as many employees as they want to without limitation. They can pay them the salaries they want to, except that they must conform to the Reclassification Act, and under the Reclassification Act you can pay some lawyers as high as $15.000

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a year. I want to discuss now in detail some of the specific details of this bill.

EXPENSES PAID BY ALL THE PEOPLE

I quote from section 4 the following provisions:

Each member of the Board shall receive a salary of $10,000 a year. * * *
The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties. * * *

Under the above provisions a whole army of additional employees will be placed on the Government pay roll, and we will never be able to get them off. Under the Classification Act they can be paid tremendous salaries. You colleagues will remember that I gave you the names of 876 lawyers employed by the Veterans' Administration drawing salaries ranging from $9,000 per year down, and most of them were merely inexperienced lawyerettes who had never tried an [9701] important case in a courthouse prior to their appointment. And the whole people of the United States will be called upon to pay all of the enormous expenses of this board and its army of employees, when only the 3,000,000 members of the American Federation of Labor will be interested in this legislation, and it is for their especial benefit that it is passed.

NO LIMITATION WHATSOEVER ON EXPENSES

I quote the following from page 10 of the bill:

All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

You will note from the above that not only are traveling expenses allowed to the board, but they are also allowed to its army of employees, and that in addition to their $10,000 annual salaries these board members are allowed subsistence expenses, in addition to their traveling expenses, and likewise their army of employees are allowed their subsistence expenses in addition to their salaries and traveling expenses, when they are away from Washington, and they can be traveling and sojourning all over the United States, under the following provision which I quote from page 11 of the bill, to wit:

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States.

There are 48 States in this Union. It is a long way from Seattle to Florida. It is a long way from Maine to California. The expenses of the agents and agencies of said board meeting at any place in the United States, and exercising its powers and prosecuting its inquiries "in any part of the United States" with traveling expenses and per diem subsistence allowances in addition to salaries, are going to cost

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the people a tremendous sum of money annually. We have not forgotten the scores of useless and pleasure trips that were taken by scores of employees of Director John B. Densmore in the United States Employment Service during the war.

PENALTIES INTIMIDATING ALL EMPLOYEES

I quote from the bill the following penalty prescribed for any employer who impedes or interferes with any agent of this board, to wit:

> Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

Under the above provision, and the other provisions of the bill, where an employer had 50 well-satisfied employees, and they were receiving good wages, but were not unionized, and did not want to unionize, and all liked their jobs and their wages and their employer, and were all thoroughly well satisfied, if some agent interfered, and demanded that they all be unionized, if their employer were by them invited to advise with them, and were to advise against such unionization, he would be guilty of a felony, and be fined $5,000 and imprisoned for 1 year.

RIGHTS FOR EMPLOYEES, BUT NONE FOR EMPLOYERS

I quote the following from section 7 of the bill:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

You will note that under the special heading in the bill, "Rights of employees", it is provided that they may "engage in concerted activities for mutual aid", and this is not restricted to an employer's own employees, but labor agitators from anywhere may thrust themselves into a man's business and interfere with his employees and try to get them dissatisfied and demand that they unionize against their will, because the bill, in defining "employee", uses this language on page 5, to wit:

> The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer.

So we may expect a constant strife and turmoil and interference by union agitators among satisfied nonunion employees in every business everywhere in the United States, and no employer will dare to say one word to his own employees, because it will mean a fine of $5,000 and a year in the penitentiary.

MORE WORK FOR OUR SUPREME COURT

Is there a good lawyer in this House who for one moment believes that such a law would be upheld by the Supreme Court? Certainly it will not stand. Passing this bill is a futile thing. It is a mere gesture.

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EMPLOYERS CONDEMNED UNFAIR

Under section 8 of this bill an employer is condemned to be unfair if he should "interfere with, restrain, or coerce his employees in the exercise of their rights guaranteed in section 7", or if he should "interfere with the formation or administration of any labor organization", or if he should "discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization", or if he should "discharge or otherwise discriminate against an employee who filed charges against him or gave testimony against him."

BOARD MADE JUDGE, JURY, BAILIFF, PROSECUTOR, AND EXECUTIONER

I quote the following from section 10 of the bill:

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than 5 days after the serving of said complaint.

Under the above provision, any one of our constituents engaged in business could be summoned to appear before some agent anywhere in the United States, and to answer any kind of ridiculous charges, and would be forced to the great expense of employing high-salaried attorneys, and paying the expenses of his attorney, his witness, and his own far distant from his home for a period that could extend into weeks. This bill is going to cause more men to go out of business and more long-established businesses to close up, and more employees to lose good-paying jobs in which they are now well satisfied, than anything that has been done by Congress before in half a century.

WHOLLY WITHOUT BENEFIT OF LAW

The last straw that breaks the camel's back is the provision in this bill on page 15, that provides that in such hearings before said Board, or any of its agents, the employer is to be tried upon the particular whim of the particular agent who has summoned such employer before him, the following being such provision:

In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

ANY EMPLOYEE COULD CONTINUE LITIGATION

If an employer had 500 employees, and the Board summoned such employer before it upon a charge of unfair practice toward them all alike, and after spending weeks in an exhaustive bearing, such Board should determine that the charge was unfounded, and not sustained, and should discharge such employer, and such decision should meet with the approval of 499 of said employees, the remaining employee

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nevertheless could appeal such decision to the courts, and force such employer to continue in such expensive litigation, under the following provision on page 19, to wit:

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain [9702] a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside.

As I said in the beginning, this bill is a unilateral contract for employers and employees, which means that it is a one-sided contract, with every right and privilege given to employees, and not a right given to employers; but every burden and penalty possible is placed upon all employers.

MEDDLING SNOOPERS

I quote the following from page 21 of the bill:

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

And if such employer should refuse to be thus examined, or to allow snoopers to go through the books of his establishment at will, or should refuse to jump across the United States at the command of such agent, and take all of his books and records of his business with him to place before such agent, he is to be punished for contempt under this bill.

PERSONAL SERVICE NOT NECESSARY

When an agent wants to serve a far-distant employer with a complaint, or order, or other process, all he has to do is to mail him a copy by registered mail, or else telegraph him, even though he might be away in Siberia, and 10 days later the hearing can be had, regardless of the distance such emloyer may live from the hearings. I quote this provision from page 22, to wit:

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served.

EVEN OUR GOVERNMENT MUST RESPOND

I quote the following from page 23 of the bill:

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

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COUNTLESS STRIKES TO ENSUE

During the period of the World War there were 6,000 strikes against the Government of the United States. Following the passage of this bill, it will take a high-powered adding machine to count the strikes that will occur annually. The following is section 13 of the bill:

SEC. 13. Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

I cannot believe that the President of the United States wants such a bill as this passed. He surely has not weighed and carefully passed on all of its provisions. There is not a possible chance for the Supreme Court of the United States to uphold it; it will be set aside as soon as it reaches our high tribunal. So why should we put our Government to a lot of useless and wasteful expense in passing a futile gesture?

A FEW WELL-KNOWN ILLUSTRATIONS IN WASHINGTON

Let me remind you of a few instances here in Washington where union troublemakers interfered with employers and employees. Some of the older colleagues here will remember the Raleigh Hotel strike. There was perfect peace and harmony between the Raleigh Hotel and its employees. Good wages were paid, satisfactory in every way to the employees. Walking delegates first demanded of the hotel that it unionize its employees and sign a union contract. The hotel refused upon the ground that its employees were all well satisfied and did not want to unionize. Then the walking delegates demanded of the employees that they must unionize, and again were told that they did not want to do so, and were perfectly satisfied in every respect. Then force was applied, and the employees were forced to strike, and to demand a union contract, and when the Raleigh Hotel refused to be bulldozed and controlled, and hired other employees, the hotel was picketed for weeks, with three 8-hour shifts of pickets, paid by unions to march around this hotel day and night, with banners calling the Raleigh Hotel unfair, and such banners reading "This is a scab hotel," "No decent people will patronize it," and the matter had to be thrashed out in courts at great expense, before such hotel was protected and given its rights by law. If this bill had been in effect, the Raleigh Hotel would have been helpless, and would have been sandbagged into having its inherent constitutional rights taken from it here in the Nation's Capital.

PICKETING GUDE

Mr. Gude is a well-known florist in Washington. He has spent a lifetime building up his magnificent business here, well known over the United States. He started here many years ago with only a few employees. Now he owns one of the largest florist businesses in the United States, and hires a large number of employees. Union agitators some years ago demanded of him that he unionize his employees. He told them that he would do it if the employees wanted it done. Some of his employees had worked for him for 30 years. All of his employees were well paid, were all well satisfied, and were all loyal to Gude, and stated that they did not want to unionize. Then the union agitators demanded of them that they must unionize,

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and although threatened with violence, they refused. Then Mr. Gude was embarrassed and interfered with, by having pickets placed around all of his business establishments, and his customers insulted, and he had to resort to the courts before he got justice. If this bill had then been law, he would have been forced to unionize, when neither he nor his employees wanted it done, and when both he and his employees were all well satisfied.

PICKETING REEVES

I remember well the unwarranted interference with Mr. Reeves some years ago. He runs a first-class bakery and delicatessen at 1209 F Street NW. Some of his employees have worked for him for 40 years. All of his employees were paid wages higher than others were receiving for comparable service anywhere in Washington. Demand was made on him by union agitators that he must unionize his employees. His employees refused to do it. They all said they were well paid and were well satisfied. Then he was picketed. Day and night men and women were paid to march in front of his place of business carrying banners calling his store a scab joint, and insulting his many customers by telling them that no decent person would patronize Reeves, and he had to resort to the courts to get his constitutional rights. If this bill had then been law, he would have been deprived of his rights, and his satisfied and well-paid employees would have been forced to unionize and pay monthly dues to unions to pay big salaries to union agitators.

RECENT TAXICAB STRIKE HERE

Our colleagues will remember the recent outrageous taxicab strike here in Washington during the Shriners' convention when the Diamond Taxicab Co. and the Union Taxicab Co., tried by force and violence to force all of the taxicabs in Washington to practically double their rates. Our colleague from Kentucky [Mr. MAY], and his secretary, were forced to get out of their cab, and their driver was attacked, was thrown out of his cab, had his keys taken away, and forced to abandon his car, and such outrages were pulled off all over this city. They did not respect the Constitution of the United States, which forbids anyone to stop a Member of Congress on his way to the Capitol, **[9703]** and when Congressman MAY told these strikers he was a Congressman on his way to attend a committee meeting, they scornfully told him they did not care a d—— about Congress, or a congressional committee or a Congressman, that if he wanted to go to the Capitol, he would have to take a street car, but he could not ride in a taxicab. If this bill had then been law, they would have compelled every driver of every taxicab in Washington to obey their commands, forced upon them by threats, intimidation, and violence.

SALTZ BROS. PICKETED SINCE NOVEMBER

There is a high-class firm of clothiers doing business at 1341 F Street NW., known as Saltz Bros. They have been in business for years. They are paying out thousands of dollars each year for rents and taxes. They have a pay roll which amounts to about $50,000. Last Novem-

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ber union agitators demanded that they unionize their employees. All of their employees are well paid, were all well satisfied, and did not want to join any union. Saltz Bros. refused to make them join against their will. And then their business was picketed, and for months has been picketed day and night, with men and women paid by unions to march back and forth, and forth and back, in front of their store and insult and interfere with their customers.

FORCED TO FILE SUIT

Saltz Bros. were forced to hire lawyers, and to file a bill in equity in the Supreme Court of the District of Columbia, being Equity No. 58083, from which I quote the following from their allegations:

6. Plaintiff further avers that in the early part of November of this year a person purporting to be a representative of the said Retail Clerks' Local Union No. 262, called on one of the officers of plaintiff company for the purpose of inducing said plaintiff to enter into a contract with the said union, which provides, among other things, for the limitation of the hours of labor during which its employees shall be engaged, and also fixes a certain minimum wage scale. The said labor representative was informed that by reason of this being a busy season that time for the consideration of the same be postponed until after the holiday business shall have been disposed of, and thereafter and during the latter part of November the said representative again called for the purpose, and a few days thereafter a telephone call was received importuning plaintiff to enter into the contract referred to. In each case the said representative threatened and intimidated the plaintiff to comply with the demands referred to, otherwise the establishment would be picketed. In the conferences referred to, plaintiff emphasized the fact that the matter in hand required some thought and consideration and asked that further time be allowed for a determination of the question. Plaintiff further imparted to the said union representative the fact that it had bound itself to the terms required by the National Industrial Recovery Act, evidenced by the fact that several N. R. A. insignia are displayed in and on the premises; that the said N. R. A. requirements made provision for a minimum wage scale to the employees and also regulated the hours of employment, all of which were being definitely enforced in the management and conduct of plaintiff's business.

7. Plaintiff further avers that much to the surprise of plaintiff's officers, stockholders, employees and patrons, on, to wit, the 5th day of December 1934, there appeared in front of the premises a man purported to represent the said union organization with two conspicuous signs on his person, which signs are commonly known as "sandwich signs", bearing the following inscription, to wit: "The firm of Saltz Bros., 1341 F Street NW., is unfair to organized labor. They refuse to recognize the Retail Clerks' International Protective Association, Local No. 262, affiliated with American Federation of Labor, approved by Washington Central Labor Union." Since which time there have been three different men so engaged, the names of whom are unknown to plaintiff, though efforts have been made to ascertain the same.

8. The individuals described in the paragraph next preceding, usually known as "pickets", with the display signs referred to, have been patrolling and picketing the premises aforesaid in close proximity to the entrance and the show windows of the said premises, thereby obstructing the entrance and preventing the public and patrons from viewing the display windows and preventing ingress and egress to the store, much to the annoyance and inconvenience of the said public and patrons; and in some instances, upon information and belief, plaintiff avers that its business has been substantially embarrassed, resulting in a diminution of patronage, as well as immediate irreparable injury, loss, and damage, unless a temporary restraining order be issued.

8. Plaintiff further avers that it has never before had any disputes or other difficulty with any labor or other organization having for its interest the benefit of wage earners; that a large part of the mercahndise handled by plaintiff consists of union-made articles, and has never had any difficulty with employees with reference to either wages or hours; that all of its employees are satisfied with the treatment they receive as the said hours and wages are regulated by the provisions of the National Industrial Recovery Act, in support of which there is attached

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hereto and prayed to be made part hereof affidavit of employees made by 25 employees, and also the individual affidavits of certain patrons of plaintiff, being David L. Kreeger, Earle Chesney, Nathan Raffier, Isador Nahmanson, James S. Robb, and E. R. Grant.

9. Plaintiff further avers that the act and conduct of the picketers referred to constitutes a threat and menace against its patrons and accordingly, as plaintiff is advised, the same should be prevented by injunctive relief against a continuance thereof. In spite of the facts hereinbefore averred there remains before the premises of plaintiff the picket hereinabove described, and plaintiff respectfully shows that the presence of such picket constitutes a threat, menace, and nuisance to the peaceful conduct of its affairs.

Wherefore plaintiff, having no plain, adequate, and complete remedy at law, seeks the aid of this honorable court and prays as follows:

1. That writs of subpena be issued directed to the defendants and commanding them and each of them to appear and answer the exigencies of this bill of complaint, but not under oath, oath being expressly waived.

2. That a temporary restraining order be granted forthwith without notice to said defendants, prohibiting them and each of them, their and each of their agents and servants directly or indirectly from interfering with plaintiff's business, and that the picketing referred to be promptly enjoined, etc.

AFFIDAVIT OF SATISFIED EMPLOYEES

The following is the affidavit of the satisfied employees of Saltz Bros., which was attached to said bill in equity:

DISTRICT OF COLUMBIA, to wit:

The undersigned, each for himself, respectively, being first duly sworn on oath according to law depose and say that they are employed by Saltz Bros., Inc., doing business at 1341 F Street, in the city of Washington, D. C.; that in the course of the employment as aforesaid the hours during which they are employed and the salaries received are regulated entirely by the National Industrial Recovery Act, and in the said premises several N. R. A. insignia are exhibited; that the said salaries and hours are fair and reasonable, and that they are satisfied with the same and have no desire to become affiliated with any labor organization having for its prime purpose the regulation of hours and wages.

Affiants further say that for several days past and during the usual business hours there has been a man walking in front of the premises and across the entrance leading thereto wearing a sign bearing the inscription "The firm of Saltz Bros., 1341 F Street NW., is unfair to organized labor. They refuse to recognize the Retail Clerks' International Protective Association, Local No. 262, affiliated with American Federation of Labor, approved by Washington Central Labor Union", in his perambulations as aforesaid interferes with persons from freely inspecting the display windows and as his presence also tends to obstruct the entrance to the building he thereby interferes with patrons and others in their effort to enter the same.

Name and address: Walter Brown, Logan Circle; Peter Keval, 1705 East Capital Street; Anna Rightus, 1151 New Jersey Avenue NW.; Louis E. Feinberg, 2300 Eighteenth Street NW.; Caroline M. Morgan, Dupont Circle Apartments; John Wallace, 640 Rickford Street NE.; Robert Worth, 2022 Sixteenth Street NW.; G. Nagelberg, 916 Seventeenth Street NW.; Arthur L. Cooney, 921 Nineteenth Street NW.; J. S. LaCoste, 1723 Eye Street NW.; Lee Sprinkel, 1209 N Street NW.; H. R. Welch, 61 Preston Avenue, Cherryhale, Va.; B. W. Costolow, 2528 Pennsylvania Avenue SE.; A. Norman, 3804 Jenifer Street NW.; O. C. Welk, 2121 Branch Avenue SE.; J. E. McGeary, 2007 Perry Street NE.; Harry Baulser, 4109 Illinois Avenue NW.; Morris A. Zetlin, 1627 Lamont Street NW.; Paul Goetz, 1605 North Appleton Street, Baltimore, Md.; George Gingrich, 1621 Eye Street NW.; W. Saulsbury, 618 Franklin Street NE.; Annes Scrugg, 2120 P Street NW.; Florence Hardman, 1243 E Street SE.; Lee Schaefer, 1423 Chapin Street; John Speigel, 1616 Q Street NW.

Subscribed and sworn to before me this — day of December 1934.

[SEAL]

WM. G. WINSTEAD,
Notary Public, District of Columbia.

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NO RELIEF YET

And union labor is so well entrenched in Washington, D. C., that Saltz Bros. have not yet been able to get any relief, and are still being picketed, with their constitutional rights denied them, notwithstanding the fact that all of their employees are well paid, are well satisfied, and do not want to unionize. But if this bill should become law, they will be forced against their wishes to unionize, and if Saltz Bros. should then say one word against it, they would be fined $10,000, and imprisoned for 1 year.

ANOTHER CASE OF PICKETING

Just across the street from Saltz Bros. is another similar case, where an American employer is being picketed, because neither he nor his employees, who are all well paid, and well satisfied, do not want to unionize.

[9704] DELICATESSEN JUST AROUND THE CORNER

Just around the corner from Saltz Bros., on Fourteenth Street, this side of the Hamilton National Bank, is a first-class delicatessen, full of customers all the time, which is being picketed and has been picketed for months, because both the employer and the employees refuse to unionize. The employees are all well paid and are well satisfied, and do not want to join the union. If this bill is passed they will be forced to join.

AM AN OLD-FASHIONED AMERICAN

I am the kind of an American who believes that employees who are well paid and are well satisfied do not have to join a union unless it is their wish and will. I am against forcing them to do anything that interferes with their inherent, constitutional rights. [Applause.]

The CHAIRMAN. The time of the gentleman from Texas [Mr. BLANTON] has expired.

Mr. WELCH. Mr. Chairman, I yield 5 minutes to the gentleman from Oregon [Mr. EKWALL].

Mr. EKWALL. Mr. Chairman, I was rather amused at the story of our genial friend from Texas [Mr. BLANTON], the Sage of Abilene, when he told us about the Supreme Court having to teach him his law rather than to get it out of the law books. Of course, that was not the fault of the Supreme Court. That was his fault.

Now, so far as this bill is concerned, as I see it, if passed, it is going to be administered by the National Labor Relations Board. I am sure the gentleman does not mean that he thinks the President of the United States is going to appoint members on such a board who will work unnecessary hardships upon employers or employees.

So far as the constitutionality of this bill is concerned, you know there are lawyers and lawyers. Real lawyers are those who are learned in the law. Then there is another class of lawyers who merely practice law. I presume I am in the second category, but I do not think we need worry about the constitutionality of this bill, because it will be merely up to the board to apply the terms of this bill to a state of facts that it will fit. If they meet such a situation as only

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applies to intrastate business, of course, if these constitutional lawyers are correct as to the limitations of the bill, the board members will probably keep their fingers out of it. If not, the Court will tell them to do so, or indicate the bounds beyond which their authority does not extend.

As I understand, this bill merely gives the employees the right to have majority rule. That is the right that we have in this body. Our laws are passed by a majority. The entire structure of our Government is based upon majority rule. I take it that labor is merely asking to be heard, and not to have to go to the employer as supplicants. If a majority of the employees of a particular firm cannot say to their employer what they want, how will we ever have any industrial peace? How will we ever stop industrial strife? There may be four or five different groups all in the same organization, each asking for something different. So it seems to me it is at least a wise provision to try something of this kind.

There is nothing in this bill which gives the American Federation of Labor the exclusive right to organize employees. There is not anything in the bill which will eliminate company unions, as I see it. It seems to me it simply gives the men the right to organize and bargain collectively without the domination and interference of the employer, and when the employer does interfere and influence, then, of course, it is not real organization, or bargaining.

This is not a strike law. It does not seem to me to be designed to foment strikes. I take it that its purpose is to obviate strikes. I have had many letters and telegrams from my district for and against the bill. My district and the entire Northwest is paralyzed with strikes today. The lumber industry is entirely at an impasse. Plants are closed down. It is claimed by those who have worked with this bill that it will, if passed, obviate such conditions. I say that we have numerous strikes now. Let us give this a fair opportunity to be tried out. If it does not do the things that the gentleman from Massachusetts and his colleagues say it will, we will not have locked the door for all time. We can repeal the law if it does not do the things we had hoped it would at the time of its passage, and if it proves to be a source of more strikes and trouble than now obtains in industry. It seems to me that this bill is at least entitled to a fair hearing and I believe it is entitled to a trial. I am not certain whether it will do these things, but I hope it will. So let us give it a fair trial.

The CHAIRMAN. The time of the gentleman from Oregon [Mr. EKWALL] has expired.

Mr. CONNERY. Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina [Mr. COOLEY].

Mr. COOLEY. Mr. Chairman, two days ago in this House we passed legislation which we hope will save the farmers. Today in this House we will pass legislation which seeks to save the American laborer.

It was not my pleasure or my privilege to vote for the passage of the original National Industrial Recovery Act. Had I been a Member of Congress at that time, I am sure that I would have voted for its passage, even though we realize now that it was far from a perfect piece of legislation. Although it was not perfect, I am sure that it breathed the true spirit of freedom; freedom from starvation wages, child labor, and unbearable working hours and conditions.

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As to the National Recovery Act, our Supreme Court has spoken and no one has a right to challenge the authority of its power nor question the correctness or wisdom of its decision.

The Blue Eagle lived for but a day, but while it lived it held in its claws and clutches the industrial buzzard which had sunken its bill into even the vitals of childhood in the sweat shops of this Nation.

The Supreme Court has spoken, but the spirit of the Blue Eagle lives on and will continue to live until the American laborer is freed from the bondage of economic slavery.

The National Industrial Recovery Act, upon its passage, was hailed by our then newly chosen Chieftain as "a new charter of rights long sought and hitherto denied." I am for this bill because it is animated by the same spirit of freedom. I am for it because it seeks to eliminate the cause of unrest and strife; and fosters, protects, and promotes the free right of collective bargaining, and seeks to give to the American workingman the right to live and be happy.

This bill may not be perfect, but it is at least an honest effort to redeem a campaign pledge of the Democratic Party to give to labor the right of collective bargaining and to protect them in that right. We are tired of platitudes—the law must become sensitive to life and harmonize with the technique of modern industry.

I hope, therefore, that this bill will pass and that the worker of America will no longer be a plaything of fate and forced to resort to industrial warfare to gain the rights which should be his by law.

Mr. CONNERY. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. MORITZ].

Mr. MORITZ. Mr. Chairman, I thank the chairman for so graciously giving me this opportunity to take my stand and place myself on record for organized labor.

Mr. Chairman, it seems to me we are living now in a period of transition under the leadership of a great President who is looking after the rights of the underdog. Every time, however, he tries to protect them and give them something they ought to have, the United States Constitution comes in the way. In past years special privilege has always had its way. I remember an instance in Pennsylvania where a judge granted an injunction against some miners because in a church they sang some songs the employers did not like. Today we have a President who is trying to give these same rights to the underdog. Let us stick with him. We are in a transition period. What we should concentrate on right now is an easier and less cumbersome way of amending the Constitution. The United **[9705]** States Constitution was not framed with the view of dealing with the complexities of life as we find it in this advanced age of machinery and economics with its multiplication of powerful agencies which could not then be foreseen. So it is up to us to find an easier way to amend our Constitution that the people may be given a fair deal. [Applause.]

[Here the gavel fell.]

Mr. WELCH. Mr. Chairman, I yield 5 minutes to the gentleman from New York [Mr. TABER].

Mr. TABER. Mr. Chairman, this bill is clearly unconstitutional, but I am not going to discuss that feature of it. I shall discuss the details of the bill, for I believe it is a bad bill and a serious menace to

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the 76 percent of labor that does not belong to unions. There is absolutely no protection in this bill for those men who do not belong to unions. Their rights and their jobs can be destroyed by those who have no respect for the fellow who works but who does not want to support or promote labor disturbances.

Mr. MARCANTONIO. Mr. Chairman, will the gentleman yield for a brief question?

Mr. TABER. I yield.

Mr. MARCANTONIO. Will not the gentleman point out the sections to which he refers?

Mr. TABER. That is just what I am going to do if I have the time. I can, however, hit only the high spots. I shall try to do better when the bill is read.

Paragraph 3 of section 8 is a provision which will permit the closed shop to be enforced by decree, which will prevent the fellow who does not want to join the union from having a job at all.

Paragraph (a) of section 9 ought to be called the sell-out section, for where the man does not belong to a union he can have his job rated at almost nothing by the union promoters. There is not any question about that, and no one can deny it. This is the worst section of the whole bill. I read paragraph (b) of section 9:

(b) The Board shall decide in each case whether, in order to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

Consider what this provision does—it permits the board to say that the unit shall be a group in a certain territory. Perhaps in that territory will be plants in which the employees are perfectly satisfied with the conditions of employment, plants where there is not the slightest excuse for trouble, but this power to bring that plant in with other plants can create a situation where these men will be forced entirely out of their rights. I do not like to see any board given such power as that.

Now, turn to paragraph (d). The right of appeal is limited to facts that are certified in a transcript by this board; and this board is given the right to conduct whatever hearings it needs in such manner as it pleases.

On page 15, in line 22, you will find this language:

In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

This provision permits this board to rig up the proposition without permitting the party who is cited to be heard at all. We should strike out the word "not" and give these people who will be brought before this board, perhaps from long distances, a fair opportunity to be heard.

Mr. CONNERY. Mr. Chairman, will the gentleman yield?

Mr. TABER. I yield.

Mr. CONNERY. They have every opportunity to come before the board. This provision with regard to the rules of evidence, to which the gentleman referred, holds true in the case of every board the United States has set up.

Mr. TABER. That condition should not be tolerated, because it permits the board to discriminate and prevent the facts being brought out.

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When an appeal comes up and the party abused says to the court that certain things were not permitted to be developed, the only way he can get relief is by having the court send the thing back to the same board for further operations. There are no rules at all to protect individuals on a further hearing.

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I yield 2 minutes to the gentlemen from Ohio [Mr. SWEENEY].

Mr. SWEENEY. Mr. Chairman, in the Seventy-second Congress I voted for the LaGuardia-Norris bill to outlaw the "yellow dog" contract. I voted for the National Industrial Recovery Act because I believed that section 7 (a) was the cornerstone of the act. I believed that it held out a hope to hundreds of thousands of men and women in this country who heretofore were unorganized. They took advantage of that law and joined organized labor in order to bargain collectively through representatives of their own choosing and to secure a just and living wage.

That act has now been declared unconstitutional by the Supreme Court. The declaration of policy remains, however, and the gains made by labor as a result of the National Industrial Recovery Act are not going to be lost. The laboring groups are going to resort to the only weapon they have and that is to strike when necessary. Read in the report of the American Steel Foundries Co. against Tri-City Central Trades Council case and the opinion rendered by Chief Justice Taft. They have this right which has been ordained to them by the Supreme Court. Unless this Wagner-Connery dispute bill is passed we are going to have an epidemic of strikes that has never before been witnessed in this country. In greater Cleveland alone over 70,000 men and women have joined with organized labor since the passage of the N. R. A. They are not going to stand by and have their wages cut and their hours of labor increased.

Mr. Chairman, who is opposing this bill? The same groups that opposed the Workmen's Compensation Act in every State; the same ones that opposed the mothers' pension acts; the old-age pension acts; the same ones that opposed safety regulations for the railroads and steamships; the same ones that opposed sanitary regulations for the sweatshops and the factories; the same group that upheld child labor. I say if this bill is passed, 5 years from now they will be glad this Congress had the foresight to pass the same because both sides to labor controversies will benefit.

Already the selfish employers of labor have begun to lengthen the hours of labor and reduce the wages of employees. In some States child labor will be as popular as it was before the inauguration of the N. R. A. Price cutting and price fixing, with its vicious cutthroat competition, is the slogan of the hour.

Mr. Chairman, none are so blind as those who will not see. The manufacturer, the industrialist, and the employer of labor who seeks to make profit from the sweat and toil of his employees is just a plain damn fool. The day that labor can be crushed and exploited is over, at least in this country. In my opinion, the gains secured under the provision of section 7 (a) of the N. R. A. will not and should not be abandoned or destroyed.

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We have under consideration today a measure passed by the Senate, known as the "Wagner-Connery Labor Disputes Act." This act is designed to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes by the creation of a national labor relations board, to which matters of issue between employers and employees can be referred for settlement. This measure reestablished the principle of collective bargaining, the principle adopted by this administration and manifestly set forth in section 7 (a) of the N. R. A., to which I have referred.

When elections are held on the question of collective bargaining, or on any other issue joined between capital and labor, it will no longer be possible, if this measure passes, for the employer to intimidate, threaten, or influence his employees in voting against their own welfare. If such action does occur, the national labor relations board, under the terms of this act, has the power to step in and conduct **[9706]** an impartial election, free from the domination or influence of either side to the controversy.

Mr. Chairman, strikes are a costly weapon to employers and employees alike. The working class of our country only resort to strikes as a last resort. They have the constitutional right to strike, as I have indicated in my reference to the American Steel Foundries against Tri-City Central Trades Council, cited by the Supreme Court. The workers resort to strikes only to retain their self-respect and the welfare of themselves and their dependents.

Let me read to you the opinion of a late President of the United States, and a former Supreme Court Justice of the United States in the case of *American Steel Foundries* v. *Tri-City Central Trades Council* (257 U. S. 184, at 209):

> They (labor unions) were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and his family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court. The strike becomes a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild.

> The strike becomes a lawful instrument in a lawful economic struggle for competition between employer and employees as to the share or division between them of the just product of capital and labor.

I have repeated the words of the Chief Justice because they are significant. It is a pronouncement from the highest Court in our land.

Hundreds of letters and telegrams come to my desk urging me to vote against this measure. I am firmly convinced in the statement I made a moment ago, that a few years hence many of these misguided

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employers of labor who are vociferous in their protest against this legislation will be grateful to the Members of the Seventy-fourth Congress for enacting this bill.

We are about to create a law that will promote harmonious relations between employers and employees and prevent untold financial loss to both classes by the elimination of unnecessary industrial strikes. This bill is confined to the elimination of practices which burden or obstruct interstate commerce and is set forth in the committee report. "These words have received repeated recognition in court decisions as in the basis for Federal jurisdiction." Let me say to the employer of labor, no doubt many of you have been victims of unscrupulous, racketeering labor leaders who have tapped you financially under the threat of calling a strike or inciting rebellion among your employees, when no real or legitimate reason necessitated calling a strike. This type of labor leader is few in number and brings odium among the entire labor movement. It is my opinion that this bill is broad enough in its language and construction to eliminate this obnoxious practice, because any attempt on the part of any person to willfully restrain, prevent, impede, or interfere with any member of the national labor relations board, or any of its agents, or agencies, in the performance of their duties, will hold the individual subject to criminal prosecution.

This act cannot and will not interfere with the harmonious relations of those employers, and there are many of them, who treat their employees as human beings, consider them as partners in a joint enterprise and share with them their profits. If the employer class as a group would adhere to this standard, there would probably be no need of organized labor today, but unfortunately the greed and selfishness of individuals have asserted themselves since we became the great industrial Nation dealing in terms of mass production.

In many parts of this country men are scrapped at 45 and denied the opportunity to earn a living. In sections not far distant from the Nation's Capital little children have to stand for hours in factorie for a mere pittance a day attending the textile and other industries The amendment to the Constitution seeking to bring about the abolishment of child labor has not yet been adopted, and in many States political influence of those individuals who enjoy profit at the expense of the destruction of the bodies of little children is still strong enough to declare for the right to do as they please under the theory of State sovereignty.

These industrial chain gangs of States, well known to many of us who have studied the question, must be destroyed. They are only comparable to the uncivilized method of prison reformation that displays itself in chain gangs where human beings are locked together while in the performance of labor along the highway of the jurisdiction that has supervision over them. In proportion to the gains secured by organized labor, the unorganized group of the country benefit accordingly. There is always a stiff and bitter fight for organized labor to bring about remedial and humane legislation beneficial to mankind in general.

Practically all of the industrial States now have workmen's compensation acts which insure to the industrial worker medical care and financial aid when they are incapacitated through injury from acci-

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dent in the course of their employment, and to their beneficiary in case of death there is paid compensation for the loss of life. The workmen's compensation laws, when properly administered, are beneficial to labor and capital. No employer of labor would dare go back to the old days that existed prior to the adoption of the workmen's compensation. The same element who opposed, as I stated, all progressive legislation beneficial to the workers are again knocking at the door of the Capitol urging the defeat of this measure. The distinguished former standard bearer of the Democratic Party and former Governor of the State of New York, the Honorable Alfred E. Smith, in his recent book on Government makes special reference to the opposition of groups I referred to you today to the many progressive measures that have been adopted in the Empire State and other States in the past quarter of a century; were predicating their opposition and stubbornness on the ground that "They just did not know what it was all about." In a charitable vein I am inclined to agree with the author's analysis and conclusion.

The employer of labor is entitled to a fair return on his investment, but never to abnormal profits at the expense of those who create the products he produces. History is in the making today for this Congress, and I am glad to register my voice and vote in behalf of this measure, which I sincerely believe to be for the best interests of capital and labor. [Applause.]

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. FADDIS].

Mr. FADDIS. Mr. Chairman, I am concerned about this bill because of its benefits to labor. I am concerned about it because I believe it will be beneficial to the employers of labor. I am more concerned about it because of the good I believe it will do for the general public of the United States. I believe this is a piece of legislation that will do away with the disastrous labor disputes that the public of the United States has been exposed to for so many years, and, after all, it is the general public of the United States that eventually pays the bill for these disastrous labor disputes. That is one of the primary reasons I am for the bill. I believe it will remove the uncertainty of labor conditions from the general public of the United States, and that it will place business on a more stable basis. I am not here to legislate for labor. I am not here to legislate for capital. I am here to legislate for what I believe to be the interests of the people of this Nation as a whole. In the final analysis, we all belong to that great body, the American public. We have heard a great deal here today about the constitutional features of **[9707]** this bill, employers' rights, State rights, and other rights, but we in the United States should be fundamentally concerned about human rights. Whether they come from States, nations, constitutions, or from whence is immaterial, so they come, but come they must. This is a bill that will give to the laboring men of the United States the right of collective bargaining, and it will set up a tribunal which will force the two contending parties concerned in labor disputes to get together around a table peaceably and arrive at a solution of their difficulties.

We have in this Nation a great body of well-intentioned men and women who are constantly striving to promote international peace.

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Theirs is a very worthy cause, indeed. Let us first rid our own Nation of the curse of industrial warfare. Let us guarantee to our industrial soldiers the rights to which they are entitled under our Constitution in its preamble. This preamble, among other things, states that the purpose of the Constitution is to promote the general welfare. In my mind that is the prime purpose of the Constitution, and if it cannot do that it certainly fails in its purpose.

We cannot have peace and tranquillity and a more perfect Union unless we insure the welfare of the masses of our people. The right to organize, the right to voice their grievances and to be represented by representatives of their own choosing is essential to the welfare of labor. Every measure ever passed to improve the conditions of labor has been passed over the strenuous objections of capital. After these measures have been in force a short time capital has come to realize their value and has endorsed them. I make the prediction that this bill will be no exception.

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I yield 10 minutes to the gentleman from Georgia [Mr. TARVER].

Mr. TARVER. Mr. Chairman, in connection with the general permission which has been granted by the Committee to revise and extend remarks, I ask unanimous consent to include in the extension of my remarks a short editorial from the Atlanta Constitution.

The CHAIRMAN. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. TARVER. Mr. Chairman, I wish it were possible for me to adopt the view which seems to be entertained by the gentleman from Oregon [Mr. EKWALL], as to the duties of a Member of this House in determining for himself as best he can the question of the constitutionality of legislation which he undertakes by his vote to write upon the statute books of this country. As I understood the gentleman in his address he professed no very great concern over the question of whether or not this proposed legislation may be in accordance with the Constitution, but said if there were any portions which in their execution by administrative authority should be in violation of the Constitution the courts would promptly hold them unconstitutional and thereby afford relief. In other words, if this philosophy is to be carried out, the Members of this House may vote for any sort of legislation which is proposed, although in their own judgment it may be clearly in violation of the Constitution of our country and take the position that the courts are not going to enforce it anyway on account of its being unconstitutional, therefore their having voted for it and written it upon the statute books will do no harm. I am unable to feel that I can properly discharge the responsibilities which devolve upon me as a Member of this House and adopt that course.

I hope that the concerted effort about which we read in the press to avoid a roll call on this bill will not materialize, although I have reason to believe it will. It is hard to conceive of 435 men passing a bill of this importance and not as many as one-fifth of them, the necessary proportion to call the roll, being willing for their constituents to know how they voted. Surely no man on an issue of this sort would expect to play both ends against the middle and try to convince those

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constituents favoring the legislation that he voted for it, and those opposing it that he voted against it. It is a time when good conscience requires that every Member of Congress let his people know at least how he votes on legislation of this kind.

If I were to vote for this bill, I would feel that I was false to the interests of the American laboring man, false to the welfare of industry without which the laboring man himself cannot survive, and I am very sure that I would be false to my oath to uphold and support the Constitution of the United States, as I understand it.

I yield to no man in my devotion to the cause of labor. I have never believed and I do not now believe that our real producers of wealth, in the factory, the mine, and on the farm, have received an adequate share of the products of their toil. I have never failed, and I shall never fail, so long as I am a Member of this body, to vote for legislation which has a tendency to bring to them a greater measure of justice. But I shall not vote to hand to the American workingman a legislative lemon, incapable of enforcement because it is in violation of the Constitution, and therefore calculated only to stir up trouble in industry from which the working classes will suffer more than anybody else, and from which they cannot possibly derive any benefit.

I know this bill is going to pass overwhelmingly. I know that my vote for or against it will make no difference as to its ultimate fate. I am aware that my vote against it will be heralded far and wide in my district as a vote against labor, and that many union men will feel that I have not supported their interests. I realize that the safest political course to take would be to say as perhaps other men are saying today, "I cannot affect the result here by my individual vote, therefore there is no reason why I should consider anything other than my political future, and I shall go along with the tide."

I do not feel that I can take that course and discharge my duty to the men and women who toil in the factories in my district. I do not feel that I can do that, and lie down at night with the feeling that I have been honest with my country and my God. Without regard to when my services here may end, I will go out with the knowledge that during my term of service I have never cast a vote for the sake of political expediency, or knowingly betrayed the real interests of those whom I represent.

I said that this bill is a legislative lemon, and that it will result in no benefit to the workingman. If I am correct in that statement, every workingman ought to approve my vote against it.

I say the courts will not enforce it, because the Supreme Court of the United States has just finished saying once again that Congress is without power under the Constitution to regulate conditions of labor, hours, and wages in intrastate employment. It has been said that an effort has been made to bring this bill within the language of the recent N. R. A. decision in the Schechter case. The only effort that I can see is the stump speech made in section I of the amended bill, which amounts merely to somebody's arguments as to why the Supreme Court was wrong. The author of this argument undertakes to say, among other things, that matters affecting the prices of raw materials, or manufactured goods, which enter commerce between the States, or affecting wages and employment, directly relate to interstate commerce; and yet the Supreme Court has said in the N. R. A. decision:

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The apparent implication is that the Federal authority under the commerce clause should be deemed to extend to the establishment of rules to govern wages and hours in intrastate trade and industry generally throughout the country, thus overriding the authority of the States to deal with domestic problems arising from labor conditions in their internal commerce.

It is not the province of the Court to consider the economic advantages or disadvantages of such a centralized system. It is sufficient to say that the Federal Constitution does not provide for it.

This bill undertakes to distinguish, in a half-hearted way, between Federal regulation of labor disputes and Federal regulation of hours, wages, and working conditions, but these are inseparably interwoven. Strikes arise over labor conditions, hours, and wages. If the Federal Government admittedly cannot regulate the conditions, hours, and wages, by what rule of logic can it regulate disputes concerning [9708] them? It is said that the only attempted regulation is to guarantee the right of collective bargaining. I do not agree with that contention, but even if it were true, the bill must be based upon the claim of a right to regulate, and if regulation may be had in one way, it inevitably follows that it may be had in any way that Congress may decide upon. There can be no piecemeal jurisdiction. If the Federal Government can regulate strikes in any way upon the ground that they directly interfere with interstate commerce, then it can necessarily regulate anything tending to cause strikes, such as wages and hours of employment, for the same reason. It either cannot enter the field at all or it has complete jurisdiction. The Supreme Court has expressly said that manufacturing is essentially local, and that Congress has no right to regulate it. Also, in the language I have quoted, it has held as reserved to the States the authority to "deal with domestic problems arising from labor conditions in their internal commerce." What is this bill but an attempt to override the Constitution as construed by the Supreme Court?

The legal arguments in favor of the constitutionality of the bill are based largely upon a line of decisions discussed by the Supreme Court in the N. R. A. case, and by it differentiated from the rulings it there announced. Dealing with conspiracies to prevent goods entering interstate commerce, or to monopolize interstate commerce in goods, is a very different thing from undertaking to deal with the purely local conditions surrounding manufacture. I shall not discuss these decisions in detail. It is, I think, sufficient to say that there are few lawyers in this body who regard this bill as constitutional under the N. R. A. decision, and most of the legal support for it comes from members who have received their legal training in other lines of endeavor than in the legal profession.

I believe in the right of employees to organize, to join unions of their own choice, and to bargain collectively. I will vote for such legislation if it relates only to interstate commerce or activities directly affecting interstate commerce. But I cannot vote for a bill which enters a field where the Supreme Court has expressly and definitely said we cannot go—that it is reserved to the jurisdiction of the States. This bill by its broad terms covers the attempted regulation of strikes, and of collective bargaining, and of formation of labor unions, in every activity, interstate or local, even in those small businesses that never ship a dollar's worth of goods in interstate commerce. The first Federal court into which a complaint is brought

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on account of an unfair trade practice will, if the employer raises the point, probably declare it unconstitutional. When the question reaches the Supreme Court, there can be no reasonable doubt but that that body will hold the law invalid. In the meantime, thousands of labor disturbances will have arisen, and the workingmen, seeking relief under this bill, will not have gotten it. They will then realize that Congress for political purposes has "handed them a lemon."

How much fairer and more honest it would be to say, frankly, to the working people of this Nation, "This is the sort of law that only your State legislatures can pass. Anything we do along this line will be held invalid. If we attempt to do it, we are merely piling up trouble for you, with no prospect of benefit, and at the same time we are delaying you in your efforts to secure necessary laws of this character from the only source that can enact them under our Constitution—the legislatures of the various States." If we lawyers in this House were advising these working men and women as clients, that is what most of us would tell them; and I cannot conceive of any reason why a Member of Congress should be less honest with a constituent to whom he certainly owes the benefit of the best judgment he has than he would be with a client in a law office.

I made a speech against the passage of the National Recovery Act through this body and the reasons I then advanced for believing that law unconstitutional were in full accord with what was afterwards decided by the Supreme Court. I believe from the bottom of my heart that this bill you are passing today is just as much in violation of the Constitution as the National Recovery Act, and, believing that, I would be unworthy of the respect of every constituent I have if I did not stand up here and frankly say so. I will be found fighting for the laboring man when many of those who court his favor by advocating something they know can never be effective will be slipping a dagger under his fifth rib in the quiet places where legislation that is effective is oftentimes concocted and wheels oiled to secure its passage. Those who work for legislation in the quiet places do not work for the laboring man. When they want him to think they have done something for him, they go about it with the fanfare of trumpets. He will be wise if he tries out the goods they bring him before he makes up his mind whether they have helped him or not. The proof of the pudding is in the eating.

Under permission granted me, I am inserting at this point the editorial from the Atlanta Constitution, which related, generally, to the dangers now faced in this country from the threatened usurpation of State rights by the Federal Government:

WHERE ARE THEIR TONGUES?

In his recent address before the Farm Clubs of America, Secretary of Agriculture Wallace made the bold assertion that "we are passing through times when there must be greater emphasis on the Federal Government than on the interests of the several States."

In arguing the necessity for careful study of "the question of State or Federal dominance in the field of government", he takes the further position that "if we are to have a strong nation, we must discover to what extent we must delegate powers to the individual States and to what extent keep them in Federal hands."

Secretary Wallace overlooks the fact that it is not within the province nor the power of the National Government to "delegate" to the States rights and powers that are guaranteed to them under the Constitution.

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It is unfortunate that certain of the self-appointed spokesmen of the administration are pressing the subject of further centralization of power in Washington at the expense of the reserved rights of the States.

Professor Tugwell, the no. 1 "brain truster", was the original proponent of this pernicious doctrine, and Secretary Wallace and others of the dreaming theorists who are now assuming to speak for the administration, have been quick to seize upon the proposal.

Fortunately, President Roosevelt has never, directly or indirectly, committed himself to the proposition that the States be forced to surrender the rights that are reserved to them by the Constitution.

Whether or not this agitation will go so far as to bring a direct proposal of a constitutional amendment, it is certain that it would be overwhelmingly voted down by Congress.

If submitted it would not be ratified by the States.

The President has been wise enough not to become ensnared in this dangerous mesh.

Already the Republicans are seizing upon the repeated utterances of some of the "brain trusters" as the basis of the outstanding issue of the campaign of next year. This is evidenced by the action of the so-called "grass roots" convention in which it was boldly proclaimed that the "principle of the rights of the States will be involved in the next national campaign." It was sounded as a pean of hope that this is to be the big issue of the Presidential contest.

Nothing that the President has ever said justified such a conclusion.

Sooner or later, however, he will undoubtedly be put in a position where he will either have to go along with the Tugwells and the Wallaces or he must disown their pernicious activities in behalf of the creation of an empire with all power lodged in Washington and with the State lines practically eliminated.

It is a dangerous step and one that the people of the country will never agree to.

Senator WALTER F. GEORGE echoed the overwhelming sentiment of the country when in his recent commencement address at Georgia Tech he said:

"The ultimate preservation of the Union depends upon the retention unimpaired of the dual system of government set up by the Constitution. The liberty of the citizens rests at last upon local self-government; upon local institutions administered by local authority, responsive and responsible to local opinion. The decision of the Supreme Court does not call for amending the Constitution or for the surrender of the reserved powers of the States over the intimate personal, business, and social affairs of the people.

"The decision of the Court calls for the full assumption by Congress of its constitutional responsibility in the consideration of legislative proposals. Nothing but disaster lies ahead if those who know well the political theories of history and are yet lacking in the vital sense of the realities of life are permitted to shatter the American system of government and to attempt to remold it in accordance with their desires. It is yet our hope that these theorists, many of whom have encamped in Washington, will have their day and pass away."

In a recent editorial The Constitution called attention to the warning by Daniel Webster of the dangers of tampering with the [9709] Constitution. He said in an address on the one hundredth anniversary of Washington's birth;

"Other misfortunes may be borne, or their effects overcome. If disastrous wars should sweep our commerce from the ocean, another generation may renew it; if it exhausts our Treasury, future industry may replenish it; if it desolate and lay waste our fields, still, under a new cultivation, they will grow green again and ripen to future harvests.

"But who shall reconstruct the fabric of demolished government; who shall rear again the well-proportioned columns of constitutional liberty; who shall frame together the skillful architecture which unites national sovereignty with State rights, individual security, and public prosperity? No; if these columns fall, they will be raised not again."

Every word of this is as true today as it was when it was uttered by Webster.

Where is the master mind in the United States Senate today who will utter a similar clarion call against the radical utterances of those who, as in Webster's day, would match their untried theories against the proven efficiency of the greatest governmental document ever written?

The Senate is not lacking in men who can sound a warning as powerful as that of Webster.

But where are their tongues?

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Mr. WELCH. Mr. Chairman, I yield 5 minutes to the gentleman from Missouri [Mr. WOOD].

Mr. WOOD. Mr. Chairman, I think this is one of the most important pieces of legislation that the Seventy-fourth Congress has considered. It involves an age-old principle—the desire for freedom. Ever since human history began, in the days of absolutism, in the days of feudalism and serfdom, and finally, under our democratic and capitalistic system, the struggle of the ages has revolved around a desire for freedom, and all this bill is designed to do is to make men free.

There is nothing complicated about this measure that I can see. Everything that was in section 7 (a) that was designed to give men and women the right to organize is in this bill. The only difference between section 7 (a) of the National Recovery Act and this measure is that there was not sufficient enforcement machinery set up in the National Recovery Act to enforce section 7 (a), and I may say that even with all its imperfections, as I have stated before, the National Recovery Act was of the greatest value for recovery of any measure that has been enacted by the Seventy-third or Seventy-fourth Congress.

Mr. RANDOLPH. Mr. Chairman, will the gentleman yield?

Mr. WOOD. I yield to the gentleman from West Virginia.

Mr. RANDOLPH. I thank the gentleman for that statement and I may bring it close to home in my State, when I remember that under the National Recovery Act, we put 30,000 unemployed miners to work.

Mr. WOOD. I am pleased to have the gentleman make that contribution.

Now, what does this proposed law do? It sets up a tribunal which is for the express purpose of enforcing the principles of this bill and of section 7 (a) of the National Recovery Act, which is to give the men the free and untrammeled right to organize and to bargain collectively, without coercion or intimidation on the part of the employer.

There is not anything new about this. We have listened to a great array of constitutional authority this afternoon. It is unfortunate we did not have the advantage of this great knowledge in the Seventy-third Congress. Probably, we would have enacted a law that would have been more nearly constitutional.

Now, some question has been raised about the Bedford Stone case. This stone was shipped throughout this country by the Bedford Co. Contractors made the contract to buy the stone, the stone was delivered, the operation was complete and the stone had been paid for and was sitting upon the ground ready to be set, and was to go into buildings in intrastate commerce, public buildings or State buildings of all types and kinds, as well as private structures, but because of the fact that the stone had been shipped from Bedford to some other point in the United States, the decision of the Supreme Court held that even though the transaction had been completed between the Bedford Stone Co. and the purchaser of the stone, and the stone had been delivered and was on the ground ready to be set, the stonecutters who refused to set the stone were hampering interstate commerce.

[Here the gavel fell.]

Mr. WELCH. Mr. Chairman, I yield the gentleman 2 additional minutes.

Mr. WOOD. Now, in the Wright case, in 1885, the employees of a coal concern in Pennsylvania, which did not own any part or portion

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of any railroad, and where the mine was owned and operated wholly within the State of Pennsylvania, the employees had a controversy with their employer and the miners went on strike. A restraining order was applied for by the operator and the court then held that because of the fact this coal was destined for interstate commerce they were in violation of the interstate commerce laws in obstructing interstate commerce.

No one can tell whether this law is going to be constitutional or unconstitutional. No one can say what the Supreme Court is going to hold as to the constitutionality of the law. I say it is a very poor way to get around this legislation. I hope that those who are considering to vote one way or the other on this legislation will forget about the constitutionality of it and vote on the principle established in this measure.

This bill authorizes the National Labor Board to go to the employer; if the employer is against dealing in collective bargaining they are brought to the conference table. The employer is compelled to deal with them, and if they do not agree on wages and working conditions the employees can strike as they do today. [Applause.]

Mr. WELCH. I yield 2 minutes to the gentleman from Michigan [Mr. CRAWFORD].

Mr. CRAWFORD. Mr. Chairman, I take this opportunity to ask a question of the chairman of the committee. With a concern in my State operating three plants, shipping from one plant goods manufactured in interstate commerce for sale in other States, and retaining for distribution within the State goods that are manufactured in the other two plants. How would this bill affect that?

Mr. CONNERY. There would be a great question whether you are in interstate commerce or intrastate commerce. I cannot answer that off-hand.

Mr. CRAWFORD. This is a practical question. If the employees in the plant from which goods are shipped into other States organize and have a right to bargain collectively, and everything is harmonious between the owner and that group, and in the other two plants they did not desire to organize, and as a matter of fact refused to organize, would not that be another complication?

Mr. CONNERY. I do not think so. In the plant that shipped goods in interstate commerce the Board would have jurisdiction. As to the other two that refused to organize, I doubt whether the Board would go in.

Mr. Chairman, I yield 3 minutes to the lady from New Jersey [Mrs. NORTON].

Mrs. NORTON. Mr. Chairman and ladies and gentlemen of the Committee, we have heard from many eminent lawyers here regarding the constitutionality of the bill. I am not a lawyer; therefore, my opinion concerning that part of the bill means little. What I am concerned with is the human aspect of the bill. As I interpret the bill, it is a step in the right direction—to equalize conditions between employers and employees. It will give both employers and employees the right to settle their differences at a council table, instead of the deplorable resort to strikes that have kept the country in a turmoil.

We are living in a changing period. Conditions are not what they were when the Constitution was written. I have the greatest respect

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for the Constitution, but am enough of a realist to believe that we are living in an age that demands human legislation if we are to continue as a happy Nation—the type of legislation that this bill provides for, and as a member of the committee I sincerely hope that this bill will pass. [Applause.]

Mr. CONNERY. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. GILDEA].

Mr. GILDEA. Mr. Chairman, eternal vigilance is the price that the American workingman must pay for his [9710] economic freedom. The Constitution was written as a result of direct action, a strike against the Stamp Act of Great Britain. In order to protect the rights of the American workingman under the Constitution and restore to him the right to collective bargaining which was taken away from him when section 7 (a) was nullified we have this bill today. I hope the Members of the House will pass the bill unanimously.

Mr. CONNERY. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. STACK].

Mr. STACK. Mr. Chairman, as a Representative of the great State of Pennsylvania, whose industries have been controlled by the moneyed interests of Mellon, Atterbury, and Grundy, I feel satisfied that the passage of this bill will be a step in the right direction; that the forgotten man of the happy warrior fame will be benefited immensely by its passage.

The working man and woman in my district need such legislation as this bill proposes and as their Representative, their servant, I shall be glad to support this bill and any other reasonable legislation that will help the working class.

Mr. WELCH. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. LORD].

Mr. LORD. Mr. Chairman, I have in my district a great many labor unions and railroad men. I have the second largest shoe factories in the world. We have the International Business Machines Co., that employs thousands of men and women. The Business Machines Co. is a nonunion shop and the shoe factories are nonunion shops. I want what is best for both union and nonunion, and let them decide for themselves. About 20,000 men and women are employed in the shoe factories. If this bill is passed, I want to know whether the shoe factories' union workers in the Eastern States can bring our shoe factories into the union without their consent? I ask that of the chairman of the committee.

Mr. CONNERY. I did not quite get the gentleman's question.

Mr. LORD. I have large shoe factories in my district. They are nonunion, and they want to remain nonunion. Is there any way through the operation of this bill that they could be brought into the union?

Mr. CONNERY. Why, no. If they want to stay nonunion, there is nothing in the bill to interfere with that.

Mr. LORD. I understand that you can create a district of the shoe manufacturers of Massachusetts and New York States, for instance, and that by that district they can be brought in without their consent.

Mr. CONNERY. Oh, no. Nobody can force the workers in any plant to join a union who do not want to join it.

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Mr. LORD. Cannot they make this a union district?

Mr. CONNERY. No.

Mr. LORD. I think this bill says they can.

Mr. CONNERY. No; the gentleman is mistaken. There is nothing in the bill here that says that.

Mr. TABER. If the gentleman will yield, paragraph (b) of section 9 does just that.

Mr. LORD. That is the way I read it, and that is the reason I asked the question.

Mr. MARCANTONIO. Under that paragraph the Board is given authority to define what a unit is and where the election of representatives is to take place, but that does not in any way compel an employee to join any particular unit. The gentleman is confusing the term "unit" with "union."

Mr. TABER. Mr. Chairman, will the gentleman yield?

Mr. LORD. Yes.

Mr. TABER. Here is the situation: If they fix the unit of bargaining so that it covers the gentleman's factories as well as the others, the result of the bargaining will be binding on them.

Mr. CONNERY. Mr. Chairman, will the gentleman yield?

Mr. LORD. Yes.

Mr. CONNERY. The gentleman is misinformed in that matter. The purpose of that amendment is when they have an election in a plant and there are three or four different sorts of unions, or non-unions, the Board may settle which one will be the collective-bargaining unit.

Mr. LORD. This is just what I contend. As the gentleman from New York [Mr. TABER] has pointed out, paragraph (b) of section 9 allows the Board to form a unit or area and decide the policy of the shops without the consent of the workers. They can include in that area or unit the factories of Massachusetts and the other Eastern States and compel our factories in Binghamton, Endicott, and Johnson City to become union shops against their own wishes.

Few, if any, shoe manufacturers have as high weekly wage as our workers have. They are happy and contented and want to remain so.

I have no objection to any workers joining a union if they so desire, but I do not want this law passed, as this section is without amendment.

The workers in our factories want to decide for themselves and not have some board do it for them.

I hope this section may be eliminated from the bill.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. WELCH. Mr. Chairman, I yield 5 minutes to the gentleman from New York [Mr. MEAD].

Mr. MEAD. Mr. Chairman, the bill which we are considering this afternoon, known as the "Wagner-Connery labor-disputes bill" is more necessary now perhaps than when it was originally introduced. That condition has been brought about by the recent action of the Supreme Court in invalidating the National Recovery Act. This measure restores collective bargaining. It creates a democracy within industry which gives to our industrial workers the same general idea of freedom which the founding fathers conferred upon citizens of the

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United States. It prohibits force and intimidation and leaves men to organize or remain unorganized as they shall desire. It will in no way force the small manufacturer in any section of the United States to organize either a bona fide union or a company union within his plant. It merely gives to the workers in both the large and the small plants, in the unorganized plant and in plants where there are company unions, an opportunity to decide for themselves and among themselves without interference the question as to whether or not they want a union and just what nature or character of a union they will have.

This is a practical question and one of the most important and serious questions that we have been called upon so decide at this session of Congress. Human rights, as well as the contentment and happiness and prosperity of our people are involved in this question. I assume that every Member believes in the right of collective bargaining so far as it applies to and concerns the efforts of labor. There are some, however, who may be reluctant to vote for this bill because of its apparent invasion of the rights of our States. There are others who may find fault with it on constitutional grounds. To the former I will say that the measure is intended to apply to those workers whose employment either directly or indirectly comes under the commerce clause of the Constitution. So far as I am concerned I find ample authority for its constitutionality in the action taken by the Senate when this measure came before that body for final action. After listening to a brilliant and scholarly address by the junior Senator from my State, whose record as a jurist and a constitutional authority measures up with the best in the land, the other body overwhelmingly approved this measure, in fact opposition collapsed and there were but few speeches made against the bill and but a handful of votes recorded in the oppostiion. Those of you who may be doubtful as to its constitutionality, I suggest that you read the speech of the author of the Senate bill and also look over the vote recorded for the bill, which will be found on page 7681 of the Congressional Record of May 16.

The question of State rights is one frequently injected into the discussion of reform measures and in some instances with the same degree of consistency as are these constitutional arguments. There are some who have always held to the theory of State rights, others who have long been de- [9711] fenders of the philosophy of the Federalists, but there are those also to be found who are champions of State rights where State rights means little or no control. There are those who plead the cause of the Federalists when State rights is the only effective instrumentality to meet existing conditions.

I am for State rights when State rights meet the needs of our time, but I believe in the Federal authority when that is the only authority that can bring justice to the masses of our people. In the beginning of our country's history, when factories were small and interstate commerce was almost unheard of, when the carrier pigeon was the fleetest means of communication, when law and authority was promulgated by the free men meeting in the town hall, State rights could protect the workers of our country. The Federal authority was remote and removed and its interference was very properly resented because of the conditions that existed at that time. But today the situation is entirely different.

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The rapid growth and development of industry, the concentration of wealth in the hands of a few, the uneven distribution of the wealth produced in the country, the modern methods of communication and transportation, the compounding of intrastate factory units into the national and international industrial organizations, all this has brought about a compelling change in matters such as we are considering in this proposed legislation.

In the old days it was the poor master and the poorhouse for those without funds who were unable to work. Today, by demand of the States, by no action on the part of the federalists or advocates of State rights, the Government was compelled to take over the relief load of the Nation and to provide not only food and clothing but work for the stricken millions of those who were in need throughout every State in the Union. If it is the duty of the Federal Government to assume the tremendous burden associated with the care of our unemployed, then it is likewise the right of the Federal Government to see to it that work opportunities are provided for the citizens of our country. Reform in the economic life of the country is necessary, reform is taking place in every nation in the world, legislation similar to this has been or is being considered in the democratic nations of the world, and by reform we mean and they mean more protection for the masses and more protection is needed because of the changed world in which we are living.

Twenty-five years ago there was one small factory in this country for every 250 people. In 1930 there was only one such factory for every 1,000 people. Thirty years ago 50 percent of the manufacturers in the United States were small enterprises and each produced less than $20,000 worth of goods every year. In 1929, 200 huge corporations owned one-half of the total corporate wealth of America and in 1931, 100 industrial corporations controlled one-third of the total industrial wealth of this country. During all this time the productivity of the individual worker increased enormously and at the same time his real wages diminished out of all proportion, and yet the profits produced by this system increased in an unwarranted degree. This division of wealth can only be solved by the direct intervention of Government exercising its control over commerce and industry or by strengthening the bargaining power of the worker, which is the intent and purpose of this measure.

We cannot continue to permit industry to grow more powerful and at the same time thwart the efforts of the workers to secure a fair share of the fruits of their labors. Every authority worth mentioning in this debate has not only advocated the right of collective bargaining for labor but they have likewise informed us that our economic troubles are caused by an uneven and an unfair distribution of the wealth which labor produces. In the past too much has been utilized for capital expansion, too little has been given to the workers to buy the goods which they produced.

We will not solve our problems by advocating State rights or Federal control. Both have their proper sphere of authority. We must get down to the fundamentals.

Mr. WELCH. Mr. Chairman, this bill, which is evidently very much misunderstood, does two things:

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First. It seeks to make effective the right of employees to organize and engage in collective bargaining.

Second. It defines what is improper or unfair for the employer to do in trying to prevent the accomplishment of that objective.

It does not require an employer to sign any contract to make any agreement, to reach any understanding with any employee or group of employees. This board created in the bill is not empowered to settle labor disputes; nothing in the bill allows the Federal Government or any agency to fix wages, regulate rates of pay, limit hours of work, or to effect or govern any working condition in any establishment or place of employment.

Nothing in the bill requires any employee to join any form of labor organizations nor does it require any group of employees to organize; it does not require an employer to compel his employees to organize.

These are facts which seem to be misunderstood. This bill is designed to put into force and effect the principle of collective bargaining. It goes no further than has been advocated by many great organizations.

May I say to my Republican colleagues that this measure carries into effect a plank in the Republican National Convention platform which reads as follows:

> Collective bargaining by responsible representatives of employers and employees of their own choice, without the interference of anyone is recognized and approved.

That is the language of the last Republican National Convention:

The right of collective bargaining has been subscribed to by many of the greatest minds this world has ever produced. Abraham Lincoln; Pope Leo XIII; William E. Gladstone; Bismarck, the great Iron Chancellor; Theodore Roosevelt; Woodrow Wilson; Daniel E. Willard, president of the Baltimore & Ohio Railroad; Sir Henry Thornton, head of the Canadian National Railways—all of those great men have subscribed to the policy of collective bargaining.

I confidently say to my colleagues that if this bill is written into the statute books of the United States and after it is placed in operation and thoroughly understood, there would not be 20 votes in this House to repeal it.

The bill should have no opposition. [Applause.]

Mr. Chairman, I yield the balance of my time to the gentleman from Massachusetts, the chairman of the committee, Mr. CONNERY.

Mr. CONNERY. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. ARNOLD, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill S. 1958 and had come to no resolution thereon.

[9713] LABOR-DISPUTES LEGISLATION

Mr. CONNERY. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the

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causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill S. 1958, with Mr. ARNOLD in the chair.

The Clerk read the title of the bill.

Mr. CONNERY. Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Mr. EAGLE].

Mr. EAGLE. Mr. Chairman, I am for this bill unreservedly; I am for this bill with all my heart.

When the Supreme Court struck down N. R. A. it struck down the highest hope of the laboring people of America. It struck it down, however, because in the National Industrial Recovery Act the Supreme Court said the Congress had overstepped its constitutional power by delegating legislative authority to a board, a bureau, or a commission. Reactionaries upon this floor today in arguing against the constitutionality of this measure have pretended that it falls within the category of the Schechter case. They are not familiar with this bill, else they could not and doubtless would not say any such thing.

In this bill we are merely providing five things that we declare as a matter of law constitute labor abuses, unfair labor practices. We ourselves are declaring specific things that are unfair labor practices. Then we set up a board to ascertain states of facts to apply to such legally declared unfair labor practices; and if they find such unfair labor practices as a matter of fact, they then apply the machinery we set up in this bill.

Mr. Chairman, every man here on the Democratic side and every man here on the Republican side, whether he knows it or not, is unconsciously, or else knowingly, in one of two categories. He is either for giving bigger and bigger unreasonable dividends to capital at the expense of those who toil or he is in favor of taking care of the proper rights of those who toil before the larger dividend is passed on to capital. [Applause.]

Before our committee it developed that four cigarette companies—Camel, Lucky Strike, and two others—in the 10-year period from 1924 to 1934, paid their officers exorbitant salaries like $50,000, $100,000, and $150,000, and even more, per year; paid tobacco growers in seven States less and less and less until they were pauperized; let out between one-third and one-half of their employees on account of improved machinery; and, after paying all costs of labor and all shipping charges, and all taxes, local, State, and Federal, declared and paid in dividends upon their watered stock the aggregate of $779,000,000; and did that during a time when their chiseling, contemptible, lying, stealing, thieving company unions chiseled in and denied the honest right of collective bargaining to a single independent union in their plants.

Mr. CONNERY. Mr. Chairman, will the gentleman yield?

Mr. EAGLE. I yield.

Mr. CONNERY. They made $779,000,000 of profit in 10 years, and their labor costs were 2 percent. These facts were testified to before our committee.

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Mr. EAGLE. They decreased the wage per hour successively year after year and increased the hours of labor year after year. [Applause.]

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio [Mr. TRUAX].

Mr. TRUAX. Mr. Chairman, we have heard a lot today from constitutional lawyers. I direct attention to the fact that the Constitution of the United States of America was drawn and drafted while Thomas Jefferson, the author of the Declaration of Independence, was away in France serving as Minister to that country. Upon his return, Thomas Jefferson, whom we all honor, love, and revere, said that the Constitution was not broad enough; and he offered 12 amendments, 10 of which were adopted by the First Congress assembled. These are now known as the "Bill of Rights." [9714] Thomas Jefferson said: "If the Constitution is not right let us amend it." I say that again that day has arrived. Today we listened to a document penned by the President of the United States which is a new bill of rights, a new declaration of independence, if you please. [Applause.] You Republicans will be booing more than that in 1936, and there will be less of you to do it. This is a new declaration of rights, because it undertakes to redistribute the ill-gotten wealth of the millionaire crowd of this country who today are opposing another bill of rights, the Wagner-Connery bill, which is an emancipation for American labor. As Lincoln freed the blacks in the South, so the Wagner-Connery bill frees the industrial slaves of this country from the further tyranny and oppression of their overlords of wealth.

They talk about the Constitution. If I felt the way some of the constitutional lawyers feel about the Constitution and about the decisions of the Supreme Court, I would be in favor of abolishing the Congress and letting the Supreme Court do the legislating for the people of this country.

Mr. Chairman, do you not know if you gave the people of this country a vote on some of these decisions of the Supreme Court, the people would swamp the Supreme Court into oblivion by a vote of 100 to 1? So long as the Supreme Court is abreast of the times and so long as they think in terms of humanity, then I say uphold the Court; but when they change those functions and think in terms of property rights, then it is time for another and more drastic amendment to this great Constitution of ours.

The old fight is embroiled. We see the same old faces that oppose all progressive humanitarian legislation. I say to my friend the gentleman from Texas [Mr. BLANTON] that the message of the President of the United States which has just been read is an answer to the argument that the gentleman made against the passage of this bill. It is an answer to every one of the constitutional lawyers, and may I say to them: What are you going to do with this sacred old Constitution? You cannot eat it, you cannot wear it, and you cannot sleep in it. [Applause.]

S. 1958, the bill being considered today, commonly referred to as the "Wagner-Connery bill," is designed to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a national labor relations board, and for other purposes. The reasons and justifications for the act are found

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in these two elemental premises. The two greatest producing classes of this country are the farmers and wage workers, who create all wealth and ultimately pay all the taxes. For the past 30 years both both of these wealth-producing and taxpaying classes have been exploited by millionaire overlords and racketeering bankers. The money lenders and Shylocks like scavengers of these human derelicts brought wholesale and instant foreclosure of farms and homes. In many cases they have plucked the feathers and picked the bones clean. As an effective answer to the majority of these human vultures, the Roosevelt administration sponsored and the Seventy-third and Seventy-fourth Congresses created the Agricultural Adjustment Act, needed amendments to which were adopted Monday; the Farm Credit Administration for the relief and benefit of farmers; the National Industrial Recovery Act for the benefit of industrialists; banking legislation for the benefit of bankers and capitalists; the Home Owners Loan Corporation for the relief and salvation of stricken home owners.

To complete this circle of relief and protection, establishment of a national labor relations board which is a quasijudicial body for labor with full power and authority to enforce the findings and the rulings is necessary. This bill is the first one to provide for a peaceful forum for both industry and labor and to benefit not only employees but employers and the people at large. It was designed originally to put teeth in section 7 (a) of the N. R. A.

Since the N. R. A. has been declared officially dead by that American dictatorship appointed and sitting for life, the nine men in black—the Supreme Court—the Wagner-Connery bill must now be enacted not to strengthen that section of N. I. R. A. but to present it in a newer, stronger, and more effective form. This legislation is necessary to guarantee to labor the right of collective bargaining. It is necessary to keep the various State militias and national guards at home attending to their own business, professions, and vocations instead of donning the uniform and soldiers' guns to quell and suppress labor strikes and riots that will ultimately result should this proposed legislation be not enacted into law.

The denial by employers of the right of employers to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial strife or unrest which have the intent or effect of burdening or obstructing interstate and foreign commerce by impairing the efficiency, safety, or operation of the instrumentalities of commerce, materially affecting, restraining, or controlling the flow of raw materials, manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce, and thereby bringing said impairments and restraints within the purview of the Congress of the United States and giving that august legislative body sufficient justification for enacting legislation that will in the future guarantee to employees by employers the right to assemble and meet and carry on by collective bargaining their inherent rights and privileges as American wageworkers and citizens.

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Whenever the normal flow of the river is obstructed and impeded by water-logged trees and stumps or refuse, the only effective remedy is to either shove, pry out, or blast out these impediments and so put the same logic and process of reasoning when the natural flow of manufactured goods or raw materials which are the products of wage-workers, of men who earn their bread by the sweat of their brows, is impeded, restrained, and obstructed by reactionary, selfish, greedy water-logged employers, then it is high time that Congress should enact legislation to remove once and for all time the causes of the impediments to human progress and welfare.

This bill is designed to promote equality of bargaining powers between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, and was carefully considered by the Committee on Labor and was reported favorably by a unanimous vote of that committee to this body for action. The bill has received the hearty approval and endorsement of Mr. William Green, President of the American Federation of Labor. It has been approved and endorsed by Hon. Francis Biddle, chairman of the National Labor Relations Board in the National Industrial Recovery Act. It has received the approval and endorsement of Hon. Frances Perkins, Secretary of Labor, and finally it has received the unqualified endorsement and approval of that great humanitarian President, Franklin D. Roosevelt.

The bill has already passed the Senate by a vote of 63 to 12. Amendments will be offered today by the committee and your support for which is urged. The amendments are merely clarifying amendments or amendments designed to successfully surmount any obstacles or hurdles that might be thrown into its way because of a reversal by the United States Supreme Court.

Naturally there are many opponents of this bill. There are many opponents who have the fortunate advantage and position of wealth, power, and money. But if you will carefully analyze this opposition, if you will study the reason, if you will look into the source of that opposition, you will find it is an opposition thrown up by the vested interests and the overprivileged wealthy few.

It is thrown up by men who in many cases call themselves employers of labor, but in reality and in truth are assassins of labor, exploiters of labor's toil and despoilers of the meager benefits that might accrue to labor and reward their toil in a fitting manner earned by the right of years of back-breaking and heart-rending toil. Look again **[9715]** at this opposition and you will find the same old faces that opposed the old-age-pension bill, unemployment insurance, and the entire social security program of President Roosevelt. Look again and you will see the same old faces that opposed the A. A. A. amendments passed Monday by this House and designed to place the farmers on an economic basis and parity with their industrialist competitors. You will see those same faces opposing the Wheeler-Rayburn bill which seeks to weed out forever those human octopi and leeches that bleed white the bodies of small investors and consumers of electrical energy, gas, oil, and telephones. Look again and you will see those same faces and individuals bitterly opposing the payment of the soldiers' bonus. They were for the Economy Act that wanted to

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take away the meager pension granted by a grateful Government to these boys who fought for their country in its hour of need. So there is nothing new in this opposition to the Wagner-Connery bill. There is nothing strange about it. There is nothing to be alarmed about it. This opposition are merely barnacles on the ship of progress. They oppose all humanitarian measures that have for their goals the betterment of human welfare. The tirades of misrepresentation, calumny, and exaggeration are so preposterous and absurd as to be amusing.

Various associations of employers have expressed unwonted solicitude for the rights of employees which they profess to believe are jeopardized by this bill. When did their hearts expand so suddenly? When did their interests in those whom they have exploited for 40 years become so magnanimous? When we enacted into law the National Industrial Recovery Act these same employers welcomed it with open arms. They knew it was designed to pull their chestnuts out of the fire and none of them had the courage nor the hardihood to avow open opposition to the premises of section 7 (a).

They have nightmares now, however, when we propose to enforce the mandate of the law as laid down in section 7 (a). Since when have these assassins and exploiters of labor donned the saintly robes of the Good Samaritan and showered their mellifluent beneficence upon those anointed?

President Roosevelt hailed the N. R. A., insofar as labor was concerned, "a new charter of rights long sought and hitherto denied." That section provided that employees shall have the right to organize and bargain collectively through representatives of their own choice, and shall be free from the interference or coercion of employers of labor or their agents, and so forth; second, that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and third, that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President. So it was indeed a new charter of rights if the employer had lived up to it. Unfortunately they did not live up to it. Donald Richberg, the Benedict Arnold of Labor, sold them out for a mess of potage; now the Blue Eagle has been transformed, by the Supreme Court decision, into a blue buzzard, and as General Johnson has so aptly said, "is as dead as the dodo" which is extinct. If section 7 (a) was good and worthy of your support, as it was, and was supported by the great majority of this Congress of the United States, then the Wagner-Connery Labor Relations Act is just as worthy of your support, and needed much more vitally at the present moment.

In the first flush of national fervor and enthusiasm that greeted the inauguration of the National Industrial Recovery Act, the National Labor Board, headed by Francis Biddle, was able by moral rather than the legal authority, to accomplish a good deal in the interpretation and application of the section. Now, that is only an Arabian Nights dream. We are faced with a condition and not a theory. We are faced with the diminution of labor, strikes, and unrest, and unemployment is constantly on the increase. Of course, it is realized that Con-

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gress would, however, make a gesture when they passed Public Resolution 44 in the Seventy-third Congress giving the President express, statutory authority to establish a board or boards to investigate the uses, power, practices, and activities of employers and employees in reference to rights under the now defunct section 7 (a). Now, with the adverse Supreme Court decision, such boards established under Public Resolution 44 are without power or authority. The larger employers of labor and exploiters of human toil not only laughed at these boards, they flaunted them, and openly showed disrespect and a woeful lack of cooperation with employees.

Under the old procedure when a complaint was made to the Board, the evidence was heard but the Board had no power to subpena witnesses or administer oaths. If the employer chose to ignore the hearing, he could do so. If the employer failed to comply with section 7 (a) the case was referred to the National Labor Relations Board, but the Board could take no action other than recommending appropriate restitution. There was no legal compulsion upon the employer to comply with the Board's decision. The case had to be referred to the Department of Justice. The recommendations of the Board went for naught and weeks and more after the alleged violation would exist while the Department of Justice prepared its case. When the case was prepared the employer could then go to the courts and obtain an injunction, as was done in the Weirton case. The plain fact is that after 2 years of section 7 (a) the Government succeeded in getting into court only 4 cases for enforcement, 2 being proceedings in equity, and 2 criminal proceedings, and only 1 of those cases—the Weirton case—has come to trial. So we had a law without teeth. A law for the benefit of labor minus the enforcement machinery. In cases where employees were ready to meet and hold elections to select their representatives, employers could hold up for months the election by an application to the circuit court of appeals.

This was done in the case of Firestone and Goodrich, rubber companies of Akron, Ohio, and the National Labor Relations Board was powerless to force action. Unwonted usurpation of power by employers taking away from employees their rights of collective bargaining and selection of their own representatives could only promote unrest, disorder, strikes, and riots.

In the Firestone and Goodrich cases, strikes were immediately threatened and were only averted at the last minute by appeals to the men to await the decision of the Court on the election orders. The result of all this nonenforcement of section 7 (a) was to plant a widespread and growing bitterness on the part of workers who felt, with considerable justification, that they were not given fair treatment, but betrayed by their Government, in the execution of its promises. Then came the Supreme Court decision which knocked down what little structure which the fond hope of labor had built up, and if this intolerable situation is allowed to continue uncorrected it will become a real menace to industrial peace that cannot be exaggerated.

The time for corrective action by Congress is at hand. It should no longer be delayed.

To those unfamilar with the strife that has been engendered by these unfair labor practices to those who are unable to envision the hatred smoldering in the hearts and minds of those workers whose crust is

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becoming ever scantier, it might be well to recall that the dire need for this bill, ever-growing industrial unrest, is caused first by the denial of the right of employees to organize and by the refusal of employers to accept the procedure of collective bargaining, and, secondly, by their own stubborness and greed and failure to raise wages, hours, and working conditions satisfactory to the wageworkers. Men can be exploited, they can be penalized, they can be punished, but this constant grinding-down process, this wearing-out process, this brutal tramping on industrial treadmills, engenders such unrest and fosters such disorder that ultimately will lead to riotous revolution. I want to ward off that baneful day. I want to see the emancipation of American labor, not by riotous revolution, but by peaceful evolution. **[9716]** The ends sought, the goals to be achieved in this bill are not new. The eternal clash between employer and employee shows no improvement, no new development because of the stubborn refusal of employers to bargain collectively. This bill seeks to borrow a phrase of the United States Supreme Court—

> To make the appropriate collective action of employees an instrument of peace rather than of strife.

Employers object to employees having personnel managers, paid workers, yet never denying their own right to use such methods. Whenever employers will grant the same rights to employees that they demand for themselves and then agree to sit down and talk the matter over, then we will be getting somewhere.

A former President of the United States, a former Chief Justice of the United States Supreme Court, and a distinguished Ohioan, William Howard Taft, summed up the issue expertly and concisely when he said—

> Labor unions were organized out of the necessity of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment.

Those who loudly proclaim "liberty" and who live on the fat of the land are always in the front ranks of those who prate about "rugged individualism." After they have accumulated their own fortune by fair means or foul, they prattle about their own rugged individualism, and if wageworkers attempt to achieve better conditions and better pay and better hours for themselves by the very methods of collective action that has resulted in riches for the industrialists, they, the industrialists, call this procedure on labor's part un-American, undemocratic, unjustified, and unwarranted.

Employers contend that the bill is discriminatory since it is limited to unfair labor practices by employers. It is contended that the bill should prohibit anyone, including, of course, employees or labor organizations, from interfering with, restraining, or coercing employees in the exercise of these rights and that without such provisions the bill is "unfair, and one-sided," and would lead to the domination of industry by organized labor.

The Railway Labor Act contains a reciprocal provision that neither employers nor employees shall interfere or coerce the other in the choice of representatives, but does not cover or attempt to regulate relations of employer to employee. If it were attempted here to

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define and regulate those relations more far-reaching and drastic provisions would need to be inserted.

Moreover, if provisions were adopted restraining employees from interfering with the rights of employers in selecting their representatives, the opponents would in no sense be satisfied. What these exploiters of labor and opponents of collective bargaining desire is a large ball and chain forged about the ankles of labor organizations and their official representatives.

Based on the erroneous and fallacious theory that labor organizations should be prohibited from soliciting membership among employees, is this doctrine. The provisions of the bill diametrically oppose that employer doctrine. We want each and every employee to be privileged, without interference or coercion, to join the organization that he wishes to join and when he wants to join. Then we want the designated representatives selected in an election supervised by the Government and representing the majority of those employees to bargain collectively with the employer, in respect to rate of pay, wages, hours of employment, and other conditions of employment. Nothing more is asked, nothing less will be satisfactory.

To those opponents of labor organizations and collective bargaining, to those who prattle about the bill being lopsided or one-sided, I would say that this bill is labor's bill. It is a new Magna Carta for employees to protect those employees from further exploitation by selfish greedy employers. Eleven million workmen are unemployed now, not only because of the depression but because of the unretarded advance of science, invention, and the labor-saving devices of the mechanistic age. Steam shovels, huge trucks and tractors, conveyor systems, fingers, hands, and sinews cast and turned from steel replace by the thousands, human beings. Man power is supplanted by machine power, yet profits go on and in many cases enormous profits. With the displacement of men by machines, these enormous profits accrue to the profit of the over-privileged few. Therefore, we take that labor be given a bigger share of the loaf through its inherent right and power of collective bargaining by the chosen representatives.

These strongest arguments that can be used against a provision outlawing coercion of employees by employees or labor organizations may be found in the attitude of the courts themselves who have held that a threat to strike, a refusal to work on material of nonunion manufacture, circulation of banners and publications, picketing, even peaceful persuasion constitutes "coercion." In some courts, closed-shop agreements or strikes for such agreements are condemned as "coercive." In this bill we declare that the domination or interference with the formation of any labor organization or contributing finances or other support to it are unfair labor practices. Precedents for this in law are found in the Railway Labor Act, section 2 of the Bankruptcy Act, amendments of 1933 and 1934, and the Emergency Transportation Act, section 7 (e).

Another misrepresentation is that this bill outlaws and prohibits company unions. That is not true, although nearly 70 percent of company unions now in existence were established subsequent to the passage of the National Industrial Recovery Act. In other words, after the employer was amply protected through the N. R. A. then

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those who were greedy, not all of them by any means, organized their own company unions so as to comply with the spirit of Section 7 (a) but not with the letter of the law. Naturally the company union, sponsored, promoted, and financed by the employer, is found to a great extent in the large, powerful, and rich industries. It is here that the bargaining power of the individual workers is most weak, and in most instances in these huge plants workers have not enjoyed the privilege of organizing. There is nothing in the bill that prevents the formation of a company union. This bill merely gives them an opportunity to choose for themselves. If the company union is the free choice of the majority of the workers all well and good. If the American Federation of Labor or some other union happens to be the free choice all well and good. Let there be no interference by the employer in respect to that free choice.

A common form of interference by employers is their participation in the management of the company union and espionage. Another is the provision in the company union's constitution that changes or alterations cannot be made without the consent of the employer. With these nefarious practices industrial life for the workers becomes a vicious application of the old arm game "heads I win, tails you lose." Another pernicious practice is the payment of additional compensation to workers representing the company union or permitting such representatives to "sell" the company union to the employees during working hours without any deduction of pay.

The various and sundry forms of interference within referred to by employers, promote unrest, dissatisfaction, strife, and resentment, and revolt against the existing order of things. These common forms of interference by employers have long been recognized by the courts. Chief Justice Hughes writing for unanimious Court states in a decision under the Railway Labor Act of 1926:

> The circumstances of the soliciting of authorizations and memberships on behalf of the association, the fact that employees of the railroad company who were active in promoting the development of the association were permitted to devote their time to that enterprise without deduction from their pay, the charge to the railroad company of expenses incurred in recruiting members of the association, the reports made to the railroad company of the progress of these efforts, and the discharge from the service of the railroad company of leading representatives of the brotherhood and the cancelation of their passes, gave support, despite the at-[9717]tempted justification of these proceedings, to the conclusion of the courts below that the railroad company and its officers were actually engaged in promoting the organization of the association in the interest of the company and in opposition to the brotherhood, and that these activities constituted an actual interference with the liberty of the clerical employees in the selection of their representatives.

In those most flagrant cases of interference wherein several of these forms of interference exist, we must conclude that that employer dominates the will of the company union thus affected.

An obnoxious form of interference is the discrimination displayed in hiring employees and the tenure of employment based upon the employees' affiliation with labor organizations that are distasteful to the employer. This form, commonly known as "yellow dog" contracts, was outlawed by section 7 (a) of the N. R. A., which was the section that was the recipient of the notorious Richberg double-crossing interpretation.

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Nothing will be found in this bill that prevents employers from exercising their natural rights of selecting employees or discharging them. What is intended is that unfair employers shall not put discriminations or penalties on those workers who will not willingly join the company union dominated by the company. Hence we say to the employer, hands off the employee elections. Let those workers exercise their own free will and judgment and select the labor organization which appeals to them most. Widespread misinterpretation as to the closed-shop status under this bill exists. Closed shops are by no means imposed upon all industry nor is new legal sanction given to closed shops.

Nothing in this bill or in any other statute illegalizes closed-shop agreement by the employer and labor organization provided such organization has not been created or supported by any practice defined in the bill as an unfair labor practice, and provided further that a certain organization is the free choice of the majority of employees as the appropriate collective-bargaining unit covered by agreements made.

Neither are the closed-shop agreements legalized in any State where it may be illegal. To those who entertain fears in this direction, I would say that no closed shop may be affected by this or any other legislation unless that agreement is approved and assented to by the employer. The fourth unfair labor practice is in respect to discharges of employees by employers because that employee has filed charges or given testimony as provided for in this bill.

The fifth unfair labor practice obviously is manifest to all. That is, the refusal of employers to enter into collective bargaining with employees. If industrial peace is ever to be permanently established, it must be on those broad principles of give and take which can be done only through collective bargaining and the making of agreements mutually satisfactory. I will vote for the bill and do everything in my power to secure its early enactment into law. [Applause.]

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I yield 3 minutes to the gentleman from West Virginia [Mr. RANDOLPH].

Mr. RANDOLPH. Mr. Chairman, there are many Members of this House who do not agree on a great many questions affecting labor with the Chairman of the House Labor Committee, but as a member of that committee I want to take these few minutes to pay tribute to the gentleman from Massachusetts, Mr. CONNERY, chairman of this committee, who is always championing the cause of labor in this House when we need him.

We have come a long way in eliminating the distress and hardships of those who toil. The Members of this House realize that too long in this Republic we have seen the crucifixion of labor upon the cross of longer hours, less pay, and unsanitary working conditions. Today the situation is not perfect, but we find that marked progress has been made, especially in the last 2 years. Ill-gotten wealth and special privileges given to certain employers helped lead this Nation on its march into the valley of the shadow of death. Under the leadership of President Roosevelt and his administration, we have realized that the prosperity of this country depends, first of all, upon the men and women who produce the wealth of the 48 States. [Applause.] An

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immediate and progressive program for helping the laboring men of this country was inaugurated when this administration came into power. We gave them not only their old jobs, but we tried to create new tasks for them as well.

May I read a short editorial from Collier's Weekly just recently published:

The most important fact in the history of labor during the last 12 months has been the great gain in employment. Business improvement has created more jobs. Unemployment still exists, but the principal relief work of the Government is now being carried on in the drought area rather than in the industrial centers.

Many people have been excited and alarmed at the increased number of strikes during the year. There is no real occasion for concern. Strikes are a familiar experience during periods of recovery. At the bottom of a depression organized labor calls few strikes. Later, when there is more to be had, controversy naturally arises.

The useful course is for labor and all other groups concerned now to work out a program and a policy to eliminate future need of emergency action.

Under this legislation, as we consider it here today, the employer is not compelled to give to the employee a different scale of pay or a different workweek, or he does not have to enter into any agreement with the employees. It simply brings to labor the right to deal with the employer in a legal way that we should desire earnestly to see exercised. Favorable action on this bill will help to lift from labor its burden of despair and throw a light upon the dark pathway that the worker too long has traveled. [Applause.]

[Here the gavel fell.]

The CHAIRMAN. All time has expired. The Clerk will read the bill.

The Clerk read as follows:

FINDINGS AND DECLARATION OF POLICY

With the following committee amendment:

On page 1, line 3, strike out the words "declaration of."

The committee amendment was agreed to.

The Clerk read as follows:

SECTION 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of ownership and out of numerous other modern industrial conditions, impairs and affects commerce by creating variations and instability in wage rates and working conditions within and between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity between production and consumption, reducing the amount of commerce and tending to produce and aggravate recurrent business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial unrest which burden and affect commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

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With the following committee amendment:

On page 1, strike out beginning with line 4 down to and including line 3 on page 3 and insert in lieu thereof the following:

"SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing interstate and foreign commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurrring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into [9718] the channels of commerce, or the prices of such material or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of interstate and foreign commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of interstate and foreign commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of interstate and foreign commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

Mr. HOEPPEL. Mr. Chairman, I rise in support of the committee amendment.

Mr. Chairman, I wish to compliment the Chairman of the Labor Committee and the members of the committee for bringing in a bill which appears to be written in the interest of the American working man. I hope that it will be administered in strict equity, in recognition of the interest of the employer as well as the employee. I am only sorry that this disputes bill does not settle the disputes which take place in governmental circles.

I call attention to a dispute or controversy which is taking place today and in which Mr. Mitchell, recently removed Assistant Secretary of Commerce, makes certain specific charges. I also call attention to an item taken from today's newspaper, in which it would appear that Mr. Ickes is not working harmoniously or in agreement with Mr. Hopkins, the Federal Relief Administrator. I have written an article for my periodical this month wherein I devoted almost a page in criticism of Mr. Ickes' action here in Washington in the discharge from employment of retired enlisted men of the Army, Navy, and Marine Corps. After reading this newspaper item, I feel included to commend Mr. Ickes, here on the floor, for his attitude in reference to the expenditure of the work-relief funds. In my opinion, Mr. Ickes is the smartest man in the "brain trust." He has shown decisively that he is in favor of dong something constructive for the American

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people and spending this huge work-relief appropriation on projects which will be an asset to the American people rather than wasting and squandering the money on projects of questionable merit under the Hopkins' plan of limiting the expenditures to $1,100 or $1,200 per man, including the cost of materials and overhead. [Applause.]

I have heard a disquieting rumor recently. It may be only the kind of a rumor the soldiers call a "guardhouse" rumor. Nevertheless, I have been told that Mr. Ickes is to lose control of the C. C. C. and that it is to be turned over to Mr. Hopkins.

In my opinion, Mr. Fechner, Mr. Friant, and the other gentlemen who have handled the C. C. C. personnel and administration have been very efficient and conscientious in their efforts. Of all the new-deal agencies, I am convinced that the C. C. C. is the most efficient and is making more substantial returns on the investment, notwithstanding its huge cost, than any other of the various alphabetical agencies established in the new deal.

If this rumor is authenticated, I wish to protest at this time the contemplated transfer of the C. C. C. organization to the jurisdiction of Mr. Hopkins, whose life experience as a welfare worker does not, in my opinion, qualify him for the responsibility of handling an organization such as the C. C. C. Mr. Ickes and Mr. Fechner are practical businessmen, and are to be commended, along with Mr. Friant, on the successful administration and development of the C. C. C. organization.

We have just heard a very excellent message from our President on the question of taxation. I am proud of the words he has uttered. I only hope that they will not prove to be mere empty words, but that they will be backed up by decisive action to accomplish the enactment of the program he has so ably outlined. On June 8 of last year we heard a message on this floor promising the people old-age pensions, but after the expiration of a year what, actually, have we? Nothing but a pauperized old-age-pension bill.

In my opinion, the President's message on taxation is a perfect document; but, unfortunately, it appears to be, for a time at least, only a promise. Action on his tax program is to be deferred until next year. If this legislation is of importance, as the President indicates, and as I firmly believe, why can we not enact it now? The interests of all the people are involved. We should tax entrenched wealth and inordinate profits. We should not adjourn and go home until we complete the job. Personally, I am fed up on the promises and bait we are handing out to the American people while they are starving. Common sense, sincerity, and honest dealing with the American public demand action now. [Applause.]

[Here the gavel fell.]

The committee amendment was agreed to.

Mr. RICH. Mr. Chairman, I offer an amendment which I have sent to the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. RICH: Page 4, line 16, insert, after the word "states" the following:

"To make effective the policy declared by the President of the United States 'the Government makes clear that it favors no particular union or particular form of employee organization or representation. The Government's only duty

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is to secure absolute and uninfluenced freedom of choice without coercion, restraint, or intimidation from any source.' "

Mr. RICH. Mr. Chairman, I simply wish to state to the Membership of the House that if this amendment is adopted it will only make effective the President's declared policy which he has advocated and I hope the Membership of the House will see fit to adopt this proposal of the President. If you adopt it, you are then advocating the principles which he has enunciated with respect to justice to labor and to capital and the free will to join any organization. If you do not adopt it, then you turn down his expressed request insofar as handling the affairs of capital and labor, in my judgment, is concerned.

Mr. CONNERY. Mr. Chairman, I rise in opposition to the amendment.

I will simply say in answer to the statement of my distinguished friend from Pennsylvania, this bill, as it is now drawn up and as it has been reported to the House by the Committee on Labor, is the bill which the President approves.

Mr. RICH. Mr. Chairman, may I interrupt the gentleman?

Mr. CONNERY. Yes; certainly.

Mr. RICH. Is it going to be the practice that any amendments that are presented here are not going to be permitted to be considered by the Membership of the House because of the fact that this is a cut-and-dried or dyed-in-the-wool bill and we must accept it as is?

Mr. CONNERY. I may say to my friend from Pennsylvania that we have no idea whatsoever of saying that an amendment offered by any Member here should not have consideration, but the gentleman in his address mentioned the President and I want to call the attention of the gentleman to the fact that this bill, as reported by the Committee on Labor to the House, is in the form in which the President would like to see it passed. This is all I said. The gentleman is entitled to his view of the matter, but I hope the gentleman's amendment will be voted down.

Mr. O'MALLEY. Mr. Chairman, I move to strike out the last word. **[9719]** Mr. Chairman, I have not spoken on this particular bill today because of the fact I think no one is in any doubt as to where I stand upon this measure, but the amendment just proposed by the gentleman from Pennsylvania is nothing but an amendment which has for its purpose the beclouding of the issue which this bill is designed to meet.

We have heard a lot of talk about constitutionality and I am getting so sick of listening to constitutional lawyers get all excited whenever we bring up a bill for the workers or the farmers or any one of the groups of America's common citizens that I think it is the opinion of the people of this country, as well as my own opinion, that these so-called "constitutional lawyers" are getting to be a pain in the neck. [Laughter and applause.] Sometimes they almost sound as if they were trying to prove to you, if they are special-privilege lawyers, that the Constitution itself is unconstitutional, especially if they have been retained to defend the unfair advantages of special privilege gained under a vicious sytem of labor exploitation of the past.

I wish to make this statement with respect to the Wagner-Connery labor bill. The principle of the bill is exactly the same principle that is contained in the Railroad Labor Relations Act that this Congress passed years ago. There is nothing in the bill that has any harm for

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industry, but it does make industry meet the worker on the common American ground of dealing over a conference table instead of dealing with him with State troopers and with hired thugs whenever there is a labor dispute.

I have received a number of letters from certain persons in my district in which they say that if this bill were passed the workers would be coerced into some labor organization of one kind or another. To make my position entirely clear, I wish at this point to insert a copy of my reply to those who have an unjustified fear of the effects of this bill.

MY DEAR SIR: I have your communication in connection with the enactment into law of the legislation known as the "Wagner Labor Disputes Act."

In frankness, I must state at the outset that I am thoroughly in accord with the principles embodied in the legislation. It provides, briefly and simply, to make the right to bargain collectively and provide a recognized formulæ for investigation and adjudication of disputes between employees and employers a statutory regulation.

I see no menace to American industry in the above proposal, and while not agreeing in detail with some of its provisions, believe it is a forward step. The Railroad Labor Act, applicable to a particular industry, is an excellent example that such legislation can be and has been of unusual benefit to industry. I need only point to the many years of excellent relationship between the railroad employees and their employers under this act; the peaceful adjudication of the many disputes brought before their board; the fine working conditions and high standard of wages in the railroad industry, to show that a national policy toward labor disputes is the reasonable way to approach the national problem of industrial peace.

I find nothing in the present legislation which would give sanction to any closed-shop proposition as charged. The right of collective bargaining for the sale of the only commodity which labor has to offer is a fundamental right and should be recognized by law. The freedom of the individual worker to select those who shall represent him in that bargaining should also be guaranteed by law just as the freedom of individuals to select their representatives in bargaining for trade, in legal actions, etc., are indisputably upheld.

While here and there unscrupulous labor leaders or unscrupulous employers use various methods of coercion to obtain unjust or unfair ends, the only person who can decide what is coercion is he upon whom it is practiced. I am sure if you would compare the Wagner-Connery bill with the provisions of Public Law 152 and the subsequent amendments to this law, that you will find they embody the same principles. I know that in view of the successful history of the Railroad Labor Act that no one would be inclined to ask repeal of that law. The Railroad Labor Relations Act being the model upon which the Wagner-Connery bill is based, I am confident that this new legislation for all American labor will have the same successful history as has the pioneer law in the field of labor relations.

Now, this bugaboo of "coercion" is a lot of "baloney!" Who can decide whether coercion has been practiced upon a worker to join a labor union except the worker himself, and if you ask any member of any union whether he has been forced to join he will give you the answer to this propaganda. Who ever heard of a company union that was really organized solely for the benefit of the workers? The organization of a company union presents the same ridiculous spectacle as would be presented if an employer were to organize a lodge or society for his workers to belong to. Imagine, if you can, an employer saying to his employee, "John, I hear you are going to join the Moose, or the Elks, or some other fraternal organization, but I think I can fix up a better society for you to belong to." This would be no more ridiculous than is the proposition of the employer saying to his employees, "Since you have decided to join a craft guild or union, I have decided to fix one up that will be better for you than any

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organization you can join which has been created and organized by the members of your own craft." The intelligent American worker knows well enough that any union organized by employers is not for the benefit of the employees, but is bound to be just the opposite sort of an organization.

I think this bill ought to pass. I think the amendment of the gentleman from Pennsylvania ought to be voted down. The amendment is practically the same as was discussed at the other end of the Capitol by those gentlemen who are always worrying about the rights and interests of the overprivileged classes rather than the woes, problems, and injustices perpetrated on the underprivileged of America's citizens. I hope the amendment will be voted down, and I hope that any other amendments which are nothing but a repetition of amendments discussed and defeated in the other body will likewise be defeated here and that we can send the bill back to the Senate as it was originally written and give labor the justice and the right to which it is entitled under a government where majority rule is the underlying and founding principle. [Applause.]

Mr. WOOD. Mr. Chairman, I rise in opposition to the amendment.

Mr. CONNERY. Mr. Chairman, I ask unanimous consent that all debate on this section and all amendments thereto close in 5 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. WOOD. Mr. Chairman, I hope the amendment of the gentleman from Pennsylvania will not be adopted, because the amendment deals with relations between employee and employee, whereas this bill deals with relations between employer and employee.

As to the term "coercion", the courts on numerous occasions in labor controversies have construed the word "coercion" to mean almost anything, insofar as employees are concerned.

The courts on many occasions have construed mere peaceful persuasion as coercion. If this amendment is adopted, it will kill the effects of the bill. It will not only do that, but if this amendment is adopted and the bill is passed it will put labor in a worse condition than it was before.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. RICH].

The question was taken, and the amendment was rejected.

Mr. CONNERY. Mr. Chairman, I ask unanimous consent that on page 4, line 22, the Clerk be permitted to correct the spelling of the word "representatives."

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

The clerk read as follows:

DEFINITIONS

SEC. 2. When used in this act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor

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Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the act explictly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and [9720] substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order No. 6763 of the President on June 29, 1934, pursuant to Public Resolution No. 44, approved June 19, 1934 (48 Stat. 1183).

With the following committee amendments:

On page 6, line 10, beginning with the word "traffic", strike out "or commerce, or any transportation or communication relating thereto", and insert "commerce, transportation, or communication."

Page 6, beginning in line 20, strike out all of subsection 7 and insert in lieu thereof:

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

The committee amendments were agreed to.

Mr. CONNERY. Mr. Chairman, I offer the following amendment which I send to the desk.

The Clerk read as follows:

Page 7, at the end of line 22, substitute a comma for the period and add the following: "and reestablished and continued by Executive Order No. 7074 of the President of June 15, 1935, pursuant to title I of the National Industrial Recovery Act (48 Stat. 195), as amended and continued by Senate Joint Resolution 133, approved June 14, 1935."

Mr. CONNERY. Mr. Chairman, this is not a committee amendment. We have not had a chance to call the committee together between

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Sunday and today, due to early morning meetings of the House. This is taking care of the transfer of the funds of the old Board to the new Board. The President by Executive order kept the old Board in a sort of status quo until this bill is passed by Congress and signed by the President.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts.

Mr. RICH. Mr. Chairman, I move to strike out the last word. The gentleman from Massachusetts made the statement that this is not a committee amendment. I question whether the Membership of the House is prepared on the spur of the moment to adopt the amendment to this legislation presented by the gentleman from Massachusetts. I think until the committee has had an opportunity to discuss and thoroughly digest the amendment, it should not be considered.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts.

The amendment was agreed to.

Mr. MARCANTONIO. Mr. Chairman, I offer the following amendment which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. Marcantonio: Page 5, line 22, after the word "as" strike out the words "an agricultural laborer."

Mr. MARCANTONIO. Mr. Chairman, at the outset I desire to state that I have made my position clear throughout the committee hearings as well as in executive sessions of the committee and on the floor of the House, that irrespective of whether or not my amendment is adopted, I am wholeheartedly for the bill and naturally shall vote for it.

My amendment, if adopted, would permit the benefits of this act to extend to the agricultural workers. It is a matter of plain fact that the worst conditions in the United States are the conditions among the agricultural workers. They have been brought to the public attention many times; for example, by the investigations of the National Child Labor Committee into the horrible conditions, especially as affecting children, in the beet-sugar fields. The complete denial of civil liberty and the reign of terror in the Imperial Valley, where the basic demand of the workers was clean drinking water, have been the subject of investigation by Government agents. Last summer saw a protracted and heroic strike by the terribly exploited union workers in the fertile fields of Hardin County, Ohio, against their employers. These workers were organized in a local of the A. F. of L. They were victims of the usual type of oppression which was called to public attention in the press.

However, the most conclusive proof that there must be Federal action to protect the right of agricultural workers to organize is to be found in the situation in Arkansas. In that State, within the last year, there has come into being an admirable union of agricultural workers, the Southern Tenant Farmers Union. It has been incorporated under the laws of the State. Its immediate demands are entirely reasonable and its methods have been extraordinarily peaceful. Yet that union is at present holding no meetings on advice of its counsel who says that it cannot be protected from terroristic

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attacks. Armed planters have patrolled the roads looking for the principal organizers of the union. The president of the union, a former rural school teacher, was driven out of the county by threats of lynching. Members of the union have been beaten up. Some of them have been cast in jail from which they were ultimately delivered but only in one or two cases after they had been confined on trumped charges for 45 days. Meetings have been forcibly broken up. The lawyer for the union is C. T. Carpenter, one of the outstanding lawyers of the State of Arkansas. He was waited on by an armed mob one night in his own home. He met them at the door with a pistol in his hand. The mob left but not without firing shots at the house.

What these people in Arkansas are organizing against is the most outrageous exploitation in America. The plantation system of itself is damnable. It combines the worts evils of feudalism and capitalism. The overseers on the plantations go armed.

A continuance of these conditions is preparing the way for a desperate revolt of virtual serfs. Unless the right to organize peacefully can be guaranteed we shall have a continuance of virtual slavery until the day of revolt. The union and the exploited victims of this system have shown an amazing willingness, or rather a deep-seated anxiety, to avoid bloodshed.

I, therefore, respectfully submit that there is not a single solitary reason why agricultural workers should not be included under the provisions of this bill. The same reasons urged for the adoption of this bill in behalf of the industrial workers are equally applicable in the case of the agricultural workers, in fact more so as their plight calls for immediate and prompt action.

I am not making any appeal to gentlemen who are opposed to this bill. Naturally if they have no sympathy for giving industrial workers the rights and guarantees under this bill, they are opposed to giving agricultural workers any rights, but I appeal to the membership of this committee and **[9721]** to those who are in favor of the bill. I advance the argument to you, that if the industrial workers are entitled to protection, then by the same token the agricultural workers are entitled to the same protection under provisions of this bill.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. CONNERY. Mr. Chairman, the committee discussed this matter carefully in executive session and decided not to include agricultural workers. We hope that the agricultural workers eventually will be taken care of. I might say to my friend from New York at this point, certainly I am in favor of giving the agricultural workers every protection, but just now I believe in biting off one mouthful at a time. If we can get this bill through and get it working properly, there will be opportunity later, and I hope soon, to take care of the agricultural workers.

Mr. BOILEAU. Mr. Chairman, I move to strike out the last word. I oppose this amendment most emphatically, because if this language is taken out of the bill as proposed by the amendment offered by the gentleman from New York, it would mean that all agricultural laborers would come under the provisions of the bill. I grant there may be some sections of the country where it would be desirable to permit

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the organization of share-croppers or tenant farmers or other types of agricultural labor, but in the vast sections of the Middle West, especially in those States where the farms are smaller and more or less of a family affair, where only the family is employed on the farm except with occasional employment of others, it would be very unfortunate to permit the organization of casual farm employees. In some States of the Union, especially in the Middle West, the farmers seldom employ more than one or two employees, and then for only seasonal employment. I do not believe that it is advisable to bring them within the scope of the bill.

Mr. MARCANTONIO. We passed the triple A bill here, and you have not done a single thing for the agricultural worker.

Mr. BOILEAU. The agricultural worker is not a problem in some of the States. In some of the States they have practically no employees in the generally accepted sense of the term.

Mr. KNUTSON. Mr. Chairman, I rise in opposition to the amendment to ask the gentleman from Massachusetts a question. The gentleman stated a moment ago that he believed in taking one bite at a time, carrying the inference that ultimately under this legislation it is proposed to organize agricultural laborers.

Mr. CONNERY. I did not say just exactly that. If the gentleman asks me personally how I feel about the organization of agricultural workers, I certainly hope they will organize just the same as industrial workers.

After thorough consideration, our committee decided, at this time, not to include agricultural workers.

Mr. KNUTSON. For the time being? That is all I wanted to know.

Mr. ELLENBOGEN. Mr. Chairman, I move to strike out the last three words.

Mr. CONNERY. Mr. Chairman, I ask unanimous consent that all debate on this section and all amendments thereto close in 5 minutes.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. ELLENBOGEN. Mr. Chairman, I take this time to ask the gentlemen from New York [Mr. MARCANTONIO] a question. Does the gentleman from New York believe that agricultural workers would come within the definition of the Supreme Court of "interstate commerce," so that they could come within the purview of this act?

Mr. MARCANTONIO. I think that the agricultural workers should be included to the same extent that the industrial workers are included.

Mr. ELLENBOGEN. I think so, too, but, under the N. R. A. decision of the Supreme Court, they could not be included in this bill, unless they came within the term "interstate commerce." The gentleman knows that.

Mr. LORD. Will the gentleman yield?

Mr. ELLENBOGEN. I yield.

Mr. LORD. Does not the gentleman think that the agricultural worker is entitled to a 30-hour week just the same as the man who works in the shoe factory?

Mr. ELLENBOGEN. I personally believe that the agricultural workers should have all the protection we can give them, but the point which bothers me is the question whether the Congress has juris-

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diction over them unless they come within the meaning of the term "interstate commerce." If we have the power to do it, we should include the agricultural workers.

I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. MARCANTONIO].

The amendment was rejected.

Mr. RICH. Mr. Chairman, I offer an amendment which is at the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. RICH: On page 6, line 9, at the end of the last paragraph, insert the following:

"The term 'labor organization' shall not include any organization defined in the preceding paragraph unless said organization files with the National Labor Relations Board its acceptance of the following conditions of operation:

"(a) That all elections and votes on strikes shall be by secret ballot.

"(b) That a reliable accounting system will be maintained, and will be audited at least annually, with reports promptly and duly made to a meeting of the members, and a copy filed with the National Labor Relations Board.

"(c) That its membership books, or rolls, will not be closed to new members and all applicants will be admitted to membership, except for good cause shown relating to the individual applicant.

"(d) That all of its objects and purposes are lawful.

"(e) That it will not instigate, maintain, or support any strike for an illegal purpose.

"(f) That it will not investigate, maintain, or support any strike in violation of any collective-bargaining agreement, or in opposition to any arbitration award rendered pursuant to an agreement to submit to arbitration.

"(g) That it will not instigate, maintain, or support any strike to further any issue which the employer offers to submit to arbitration pursuant to section 12 hereof.

"(h) That it will not instigate, maintain, or support any strike, except as a last resort after making all reasonable efforts to settle the issues by direct negotiation and governmental mediation.

"(i) That it will agree to submit all jurisdictional disputes to arbitration pursuant to section 12 hereof, and will not engage in any jurisdictional strike, in cases where other organizations, parties to such dispute, likewise agree to submit to arbitration.

"(j) That it will not instigate, maintain, or support any strike designed or calculated to coerce government or any agency thereof either directly or by inflicting hardship upon the community, against any action on the part of the State or Federal Government, or any of the agencies, or political subdivisions thereof.

"(k) That it will not instigate, maintain, or support any strike except in furtherance of a trade dispute within the trade or industry in which the strikers are engaged.

"(l) That it will not coerce, or attempt to coerce, any worker to join any particular labor organization.

Mr. BURDICK. Mr. Chairman, a point of order. I make the point of order that the amendment is not germane to this section of the bill. It introduces the subject of strikes, and the bill is dealing with the subject of what are labor organizations.

Mr. LESINSKI. It looks like a bankers' bill.

Mr. RICH. Mr. Chairman, I wish to state that the amendment itself does its own speaking and it is not necessary for any Member of Congress to make any comment on it at this time.

The CHAIRMAN (Mr. ARNOLD). The Chair is inclined to think that the amendment is not subject to the point of order. The Chair therefore overrules the point of order.

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The question is on the amendment offered by the gentleman from Pennsylvania [Mr. RICH].

The amendment was rejected.

Mr. KENNEY. I offer an amendment, Mr. Chairman, which is at the desk.

The Clerk read as follows:

Amendment offered by Mr. KENNEY: Page 7, line 9, after the word "commerce," insert "or having led or tending to lead to a labor dispute, burdening or obstructing the national defense which affects commerce."

The amendment was rejected.

[9722] The Clerk read as follows:

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of 1 year, 1 for a term of 3 years, and 1 for a term of 5 years, but their successors shall be appointed for terms of 5 years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all time, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

With the following committee amendment:

Page 7, line 24, after the word "created", strike out: "as an independent agency in the executive branch of the Government" and insert in lieu thereof: "in the Department of Labor."

Mr. RAMSPECK. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I think the question involved in this amendment is the most important one involved in the bill. The question of whether or not the agency set up to administer this law shall be an independent agency of the Government or under one of the executive departments is, in my opinion, the most important provision in the bill.

I regret that I cannot agree about this particular question with the chairman of my committee, for whom I have the highest regard, or with the Secretary of Labor, for whom also I have a very high regard.

In addition to the matter of policy I call the attention of the members of the committee to the fact that making this an independent agency will strengthen the reception given this law when it reaches the Supreme Court. The decision of the Court in the Schechter case indicates that one of the troubles with that case was the delegation of power to the executive department. The decision of the same Court rendered on the same day holding that the President had no authority to remove Commissioner Humphreys from the Federal Trade Commission gives even more evidence of the fact that if we

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make this an independent agency it will have more strength when it reaches a test in the Supreme Court. In 5 minutes' time I shall not be able to read references from the decision, but I do want to read one paragraph from that decision. In referring to the Federal Trade Commission the Supreme Court said:

> To make this possible Congress set up a special procedure, a Commission, a quasi-judicial body was created, provision was made for formal complaint, for notice and hearing, for appropriate findings of fact supported by adequate evidence, and for judicial review to give assurance that the action of the Commission is done within its statutory authority.

Further on in the decision the Court referred to the fact that the Members of this body, the Federal Trade Commission, are free from any influence in the executive department and free from all political influence except in the matter of appointment.

If this committee amendment is voted down I expect to offer an amendment to strike out, on page 3, in line 24, after the word "created", the words "as an independent agency in the executive branch of the Government", so that we simply create a board that is not in any other agency of the Government, not a part of the executive branch of the Government at all. I submit, as a friend of the bill, that if this law is to succeed it must succeed through the support of public opinion.

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, this question was fully debated in the committee. Mr. Biddle, the Chairman of the National Labor Relations Board, and Senator WAGNER are in favor of making it an independent Board, appeared before our committee and so testified. The Secretary of Labor appeared before the committee and wanted the Board established under the Department of Labor. President Green, of the American Federation of Labor, appeared before the committee and wanted the Board placed under the Department of Labor. Their reasons were that it had taken many years to create a Department of Labor, to create a Cabinet position for Labor, and that any independent board set up away from the Department of Labor would be a weakening of the Department.

I consulted with the President at the White House in reference to this. After that conference I returned to my committee and reported its result, and the committee decided to put the Board under the Department of Labor.

Mr. MARCANTONIO. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, as the gentleman from Georgia has pointed out, this is the most important question over which the committee disagreed.

I find myself unable to agree with the decision of the committee to affiliate the National Labor Relations Board with the Department of Labor. It is clearly immaterial whether this affiliation is accomplished merely by providing generally that the Board shall be located in the Department of Labor, or by providing in detail that the Secretary of Labor shall control the personnel, the regional agencies, and the budget of the Board. Regardless of variations in language, if the Board is placed within the Department, the Secretary of Labor will control the purse strings, and that control will be the decisive

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factor in determining the extent and the character of the personnel, the nature of the work done, and the administrative set-up of the Board, both in Washington and throughout the country. This in turn will be determinative of the major policies of the Board, as I shall presently discuss. On this issue there can be no compromise—either the Board must be completely independent or it must be reduced to the level of a departmental bureau.

I should have thought that even without regard for the past history of the National Labor Relations Board and the testimony before this committee, both of which seem to me compelling upon this point, precedent alone would have induced the establishment of the Board as an independent agency. The Board is to be solely a quasi-judicial body with clearly defined and limited powers. Its policies are marked out precisely by the law. That such an agency should be free from any other executive branch of the Government has been the recognized policy of Congress. Ready examples are the Interstate Commerce Commission, the Federal Trade Commission, the Communications Commission, the Securities and Exchange Commission, the National Mediation Board, and agencies that are even less judicial in character, such as the Federal Housing Administration and the Reconstruction Finance Corporation. It seems strange that this committee, which has built up so fine a record in the interests of labor, should be grudgingly unwilling to establish for the protection of labor's most basic rights an agency as dignified and independent, and as likely to attain the prestige that flows from such independence, as those which have been established to protect the interests of other groups.

The vital need for the complete independence of a quasi-judicial board that must enforce the law has been best illustrated by the collapse of section 7 (a) of the Recovery Act. That famous section broke down, not so much because the Recovery Act into which it was written did not contain adequate enforcement provisions, but because the actual enforcement of 7 (a) was tied up with the wrong agencies. The Labor Board, it is true, could make decisions, but actual enforcement rested with the National Recovery Administration and the Department of Justice. Since the N. R. A. had other functions, such as code making, and so forth, which required constant cultivation of friendly and conciliatory feelings between the N. R. A. and those with whom it had to deal, the N. R. A. has been forced repeatdely to compromise and bargain away the specific rights guaranteed **[9723]** by section 7 (a). And the Department of Justice likewise has been reluctant to act upon this touchy subject, because of entirely extrinsic consideration of government policy that should have had nothing to do with section 7 (a). The complete frustration of the present National Labor Relations Board has resulted from this very simple failure to maintain the traditional and tested division between quasi-judicial bodies on the one hand and the general work of executive departments tied up with the governmental policy of a particular administration, on the other.

This anomalous situation would be perpetuated by placing the National Labor Relations Board in the Department of Labor. The Department is an executive arm of the Government. The Secretary of Labor is an officer of a particular administration, and I say this

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from the long-range point of view, and with due regard for the abilities of the present Secretary. The Department is thus quickly susceptible to political repercussions, and it is charged with many administrative duties involving constant compromise between industry and government. Thus the Board would quickly be swallowed up in the general policies of the Department of Labor.

These difficulties are not answered at all by insisting that the judicial decisions of the National Labor Relations Board would not be subject to review by the Secretary of Labor or by any officer in the executive branch of the Government. If in fact the Board were to be independent in its actions, there would be no reason for anyone wanting to set it up in the Department of Labor. But that is not the case; the final judicial decisions are only a small part of the work of such a Board, and by control over other stages in the enforcement process the Department of Labor would be the final arbiter of the policies of the Board.

For example, to be effective in enforcement, the Board must control complaints of unfair labor practices from their very inception. Yet this would not be the case were the Board in the Department. It is quite true that the proponents of placing the Board in the Department insist that there should be no mediation or conciliation done by the Board. But that does not preclude the possibility of mediation of an unfair labor practice by the Conciliation Service of the Department before the Board would act. And in the long run, that would inevitably result from locating the Board in the Department, while its advent would be hastened by an administration unsympathetic toward labor. This is the very worst kind of confusion of conciliation and quasi-judicial work, not in that the Board will do both but that both will be used at successive stages in attempting to enforce the law.

What will result from such a procedure? Conciliation at the source will not build up the kind of records that the Board might later refer to the courts for enforcement. Compromise of the law at the outset will constantly plague the Government when the time comes to vindicate the law. A wide variety of interpretations without any centralizing force will create uncertainty and distrust. The National Labor Relations Board will be called into operation only where there has been a record of failure rather than success; only when the prestige of the Government has already been impaired by the failure of its agencies. Moreover, the duplication of effort and the long delay before complaints of unfair practices finally reach the Board will wreak havoc upon workers' rights. The worker who is wronged must get help quickly if at all. The injury of the long delay can never be redressed. The occasion to protest by his own collective action, once let past, can never be recalled. These are not fancied evils; they are present now because of the very policies which I do not wish to see continued.

To prevent unfair labor practices, the National Labor Relations Board must have control of enforcement not at the end of the trail but from the very beginning. It must follow the procedure that is followed by the Federal Trade Commission in preventing unfair trade practices. No one would suggest, when there is a claim of an unfair trade practice, that there should first be mediation by the Department of Commerce and then action by the Commission in the event of failure.

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In addition, if the Department of Labor is to control the first steps in regard to the prevention of unfair practices, it will have the discretion to cut enforcement off its sources. "Judicial independence" will do the Board no good as to cases that never reach it.

Thus the issue raised is a very narrow one. If the purpose of placing the National Labor Relations Board in the Department of Labor is that the Department and the Board shall function jointly to protect the rights guaranteed by section 7 (a), then the whole enforcement mechanism will collapse because of dispersion of responsibility and because of an overlapping of conciliation and judicial work. And if the Board should operate independently of the Department, it is unfair to make it subject to departmental contro lover budget and personnel.

In view of these major considerations, which have proved controlling in every other case where the Government has set up a quasi-judicial body, the point that there might be some overlapping of statistical work by the Board and the Department of Labor is trivial and unrealistic. In fact, it is entirely appropriate to amend the bill, as has been done, to provide that the Board should not do any statistical work, mediation, or conciliation, when such services are available in the Department of Labor.

It should be repeated that the National Labor Relations Board is to be purely a quasi-judicial commission. Its prestige and efficacy must be grounded fundamentally in public approval and in equal confidence in its impartiality by labor and industry. If the Board is placed in the Department it will suffer ab initio from the suspicion that it is not a court, but an organ devoted solely to the interests of laboring groups. Far from helping labor, this will impair the work of the Board and render more difficult the sustaining of its supposedly impartial decisions by the Federal court.

Finally, let me emphasize the paramount consideration that the inclusion of the Board in the Department of Labor will injure not only the Board, but the Department itself, and through it the interests of labor. The Department was not established to handle all the industrial relation problems of the Government. It was not established to covet impartial or quasi-judicial functions, or to interpret laws of Congress. It was founded, as is too often forgotten now, as a department for labor, and to "foster, promote and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment." There is more work of this type to be done than ever before and the Department is in no danger of lapsing into disuse if it is aware of its duties. I believe that labor would have fared better under the codes if the Department had remained true to its function as a militant organ for working people, rather than attempted to appear as a labor relations bureau of the Federal Government, representing all interests alike, and overzealous to guard itself against supposed encroachments. The efforts to secure control over an impartial quasi-judicial board is a definite step by the Department away from those activities which can make it most useful to the working people of America.

The Senate bill very wisely has made the Board an independent agency. The House should follow the Senate on this very vital matter.

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Mr. CONNERY. Mr. Chairman, will the gentleman yield?

Mr. MARCANTONIO. I yield.

Mr. CONNERY. The gentleman knows, and I think the House should know, that in this amendment all we did was to put the Board under the Department of Labor.

Mr. MARCANTONIO. The answer is that while it is claimed that only nominally do we place the Board under the Department of Labor, nevertheless once it is placed there the Department of Labor and the Secretary of Labor are given budgetary control over the Board.

[9724] Once you have budgetary control over that Board, the Board must naturally become susceptible to the policies of the Department of Labor.

Mr. CONNERY. Will the gentleman yield?

Mr. MARCANTONIO. I yield to the gentleman from Massachusetts.

Mr. CONNERY. The Supreme Court of the United States is under the Attorney General. They cannot hire a janitor without that item appearing in the budget of the Attorney General. Now, no one would say that the Supreme Court is not an independent body.

Mr. MARCANTONIO. We are not dealing with the Supreme Court here. Those gentlemen are appointed for life.

Mr. RAMSPECK. Will the gentleman yield?

Mr. MARCANTONIO. I yield to the gentleman from Georgia.

Mr. RAMSPECK. The members of the Supreme Court hold office for life and, of course, are not susceptible to influence.

Mr. MARCANTONIO. In a letter to the House Committee on Labor, set forth in the committee's report on the Wagner-Connery bill, Chairman Biddle, of the National Labor Relations Board, set forth the various reasons why the proposed board should be an independent agency rather than in the Department of Labor. These reasons are powerfully reinforced by the decision of the Supreme Court in the Schechter case and in Rathbun against United States.

One of the main points in the Schechter decision was that section 3 of the National Industrial Recovery Act, authorizing the President to promulgate codes of fair competition, constituted an invalid delegation of legislative power in that it permitted the President, without the guidance of adequate standards fixed by Congress, "to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry." The Court contrasted the delegation of legislative power and the executive procedure provided in the National Industrial Recovery Act with the laying down by Congress of a specific policy to be administered by boards, with procedure of a quasi-judicial nature. Thus the Court referred to the Federal Trade Commission Act, which declared unlawful "unfair methods of competition," a phrase which the Court said "does not admit of precise definition, its scope being left to judicial determination as controversies arise." The following is quoted from the decision in the Schechter case:

> What are "unfair methods of competition" are thus to be determined in particular instances, upon evidence, in the light of particular competitive conditions and of what is found to be a specific and substantial public interest. * * *
>
> To make this possible, Congress set up a special procedure. A commission, a quasi-judicial body, was created. Provision was made for formal complaint for notice and hearing, for appropriate findings of fact supported by adequate

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evidence, and for judicial review to give assurance that the action of the Commission is taken within its statutory authority. * * *

In providing for codes, the National Industrial Recovery Act dispenses with this administrative procedure and with any administrative procedure of an analogous character.

To enforce the prohibition of the unfair labor practices described in section 8, the Wagner-Connery bill contemplates the creation of a tribunal whose procedure and functions are modeled closely after the Federal Trade Commission. To assure that the proposed National Labor Relations Board will be accorded a similar standing by the courts, it is important that nothing appear in the act indicating that Congress regards the Board merely as a bureau or agency of one of the executive departments.

The nature of boards like the Federal Trade Commission, the Interstate Commerce Commission, and the proposed National Labor Relations Board is again clearly set forth by the Supreme Court in the case of Rathbun against United States, decided May 27. In that case the Court decided that the President could not remove a Federal Trade Commissioner during his statutory term of office except for the causes enumerated in the statute. The Court distinguished its earlier decision in *Myers* v. *United States* (272 U. S. 52), where it was held that the President had the constitutional power to remove a first-class postmaster, despite a provision in the statute that such officer could be removed only on the advice and consent of the Senate. The distinction taken was that the first-class postmaster was engaged in an executive function and hence should necessarily be responsible to the President, whereas the Federal Trade Commissioner was not an executive officer at all, but was acting in a quasi-judicial and quasi-legislative capacity.

The court referred to the report of the Senate Committee on Interstate Commerce recommending the passage of the Federal Trade Commission Act:

The report declares that one advantage which the Commission possessed over the Bureau of Corporations (an executive subsivision in the Department of Commerce which was abolished by the act) lay in the fact of its independence, and that it was essential that the Commission should not be open to the suspicion of partisan direction. The report quotes (p. 22) a statement to the committee by Senator Newlands, who reported the bill, that the tribunal should be of high character and "independent of any department of the Government * * * a board or commission of dignity, permanence and ability, independent of Executive authority, except in its selection, and independent in character."

Continuing, the Court said:

Thus, the language of the act, the legislative reports, and the general purposes of the legislation as reflected by the debates, all combine to demonstrate the Congressional intent to create a body of experts who shall gain experience by length of service—a body which shall be independent of Executive authority, except in its selection, and free to exercise its judgment without the leave or hindrance of any other official or any department of the Government. To the accomplishment of these purposes it is clear that Congress was of opinion that length and certainty of tenure would vitally contribute. And to hold that, nevertheless, the members of the Commission continue in office at the mere will of the President might be to thwart, in large measure, the very ends which Congress sought to realize by definitely fixing the term of office. * * *

The actual decision in the Myers case finds support in the theory that such an officer is merely one of the units in the executive department and, hence, inherently subject to the exclusive and illimitable power of removal by the Chief Executive, whose subordinate and aide he is. Putting aside dicta, which may be followed if

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sufficiently persuasive but which are not controlling, the necessary reach of the decision goes far enough to include all purely executive officers. It goes no farther—much less does it include an officer who occupies no place in the executive department and who exercises no part of the executive power vested by the Constitution in the President.

The Federal Trade Commission is an administrative body created by Congress to carry into effect legislative policies embodied in the statute in accordance with the legislative standard wherein prescribed, and to perform other specified duties as a legislative or as a judicial aid. Such a body cannot in any proper sense be characterized as an arm or an eye of the executive. Its duties are performed without executive leave and, in the contemplation of the statute, must be free from executive control. In administering the provisions of the statute in respect of "unfair methods of competition"—that is to say, in filling in and administering the details embodied by that general standard—the Commission acts in part quasi-legislatively and in part quasi-judicially * * *

We think it plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers of the character of those just named. The authority of Congress, in creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties independently of executive control cannot well be doubted; and that authority includes, as an appropriate incident, power to fix the period during which they shall continue, and to forbid their removal except for cause in the meantime. For it is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will.

It is to be noted that though the House Committee on Labor voted to establish a National Labor Relations Board "in the Department of Labor," the committee report states:

The committee does not intend by this change to subject the Board to the jurisdiction of the Secretary of Labor in respect of its decisions, policies, budget, or personnel. An amendment offered by the Secretary of Labor requiring that the Board's appointments of employees shall be subject to the approval of the Secretary was not accepted by the committee. We recognize the necessity of establishing a board with independence and dignity, in order that men of high caliber may be persuaded to serve upon it, and in order to give it a national prestige adequate to the important functions conferred upon it. While it is convenient to locate the Board in the Department which deals with labor problems, this nominal connection will not impair the independence of the Board, which will be free to administer the statute without accountability except to Congress and the courts.

[9725] This being the purpose of the committee, is it not the part of prudence to put the matter beyond doubt and establish the Board as a wholly independent agency? The phrase in the bill "in the Department of Labor" standing alone might carry an implication that the Board is a bureau of the Department of Labor and hence automatically subject to the control of the Secretary in the matter of budget and personnel, and invites the risk that under the Myers case the President might have the unrestrained power of removal of the members of the Board during their statutory terms of office, contrary to the intent of Congress.

Therefore the committee amendment should be defeated and the Board should be left independent.

Mr. CONNERY. Mr. Chairman, I ask unanimous consent that all debate on this section and all amendments thereto close in 10 minutes.

Mr. ELLENBOGEN. Mr. Chairman, I object.

Mr. CONNERY. Mr. Chairman, I move that all debate on this section and all amendments thereto close in 10 minutes.

The motion was agreed to.

Mr. O'MALLEY. Mr. Chairman, I rise in opposition to the amendment.

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Mr. Chairman, I dislike very much to disagree with my good friend the gentleman from Massachusetts [Mr. CONNERY], Chairman of the Labor Committee, because I know that in this entire House there is no greater friend of labor and no better fighter for their interest than is the gentleman from Massachusetts. I do think, however, at this point where we are considerating the creation of a labor mediation board we ought to be guided by experience.

The gentleman from Massachusetts [Mr. CONNERY] says this Board ought to be under the Department of Labor. If that is true, then the Railroad Labor Board, created years ago, should be under the Department of Labor, and it is not. That is an independent Board, and the actions of that Board have been commendable, so that we know an impartial board can do the best job for labor, industry, and the public alike. I know the gentleman from Massachusetts [Mr. CONNERY] would not tell you that we ought to put the Labor Relations Board under the Department of Labor. If he will not tell you that, then he has contradicted by his silence the very reasoning which he has given you for putting this Board under the jurisdiction of the Department of Labor. This is designed to be a judicial, impartial mediation board, and we should not subject it to the influence, control, or domination of any executive department of the Cabinet.

Mr. CONNERY. Will the gentleman yield?

Mr. O'MALLEY. I yield to the gentleman from Massachusetts.

Mr. CONNERY. I know the gentleman from Wisconsin would not say that the United States Supreme Court is subject to the orders of the Attorney General?

Mr. O'MALLEY. That has nothing to do with this question.

Mr. CONNERY. Under the amendment that has been offered we do not give the Secretary of Labor the power to appoint employees.

Mr. O'MALLEY. Will the gentleman answer this question: Does he think the Railroad Labor Board, after 10 years of success as an impartial body, should be put under the Department of Labor?

Mr. CONNERY. Well, in view of the fact they have done very well, I would leave it as it is. If we were creating a new board, that might be a different proposition.

Mr. MARCANTONIO. Will the gentleman yield?

Mr. O'MALLEY. I yield to the gentleman from New York.

Mr. MARCANTONIO. Every board that was created during the last session of Congress, including the Reconstruction Finance Corporation, the T. V. A., the Federal Farm Mortgage, the Home Owners' Loan Corporation, and others, were created as independent branches of the executive departments.

Mr. O'MALLEY. Absolutely. If the public is to have confidence in the impartiality of this Board, it should not be under the Department of Labor because then its decisions will always be clouded in the public mind with the fact the Labor Department is prolabor and the Board is tinged with a handicap in getting wide public acceptance for its findings. Therefore, this should be an independent board.

Mr. CONNERY. It has not been in the Department of Labor up to date and it did not seem to make any difference to the employers.

Mr. O'MALLEY. It will make some difference. Now, I do not say the Department of Labor should not be prolabor. Its business is to foster, protect, and promote the interests of labor, which it should do.

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But this Mediation Board is supposed to treat all parties affected by its authority fairly, impartially, and without prejudice one way or the other. Those of use who are friends of labor know that labor asks nothing more from government or society than a square deal and wants to give industry and the public a square deal in return. An independent Mediation Board, like the Railway Labor Board guarantees the best method for an all around square deal in labor disputes. I hope the committee amendment is defeated. We should establish an independent Labor Mediation Board.

If this committee proposal to make the Labor Mediation Board a stepchild of the Department of Labor prevails, I shall be forced to offer an amendment to provide that each of the 3 members of the proposed board be appointed by the President, 1 to represent labor, 1 industry, and 1 the public, as on the Rail Labor Board, to insure fairness to all concerned in labor disputes. This I do not want to do, because I believe the President, in his wisdom, will so constitute the new board, if it is an independent agency, when he makes his appointments. Make this Board a real mediation board, not only for labor but for industry and the general public, by voting to defeat this committee amendment, and you will be doing the best job for labor and the country that we could do here today.

Mr. RAMSPECK. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. RAMSPECK. A vote of "aye" is a vote in favor of the committee amendment, which places this Board in the Department of Labor, and a vote of "no" is for the establishment of an independent board?

The CHAIRMAN. The gentleman is correct. A vote of "aye" is a vote in favor of the committee amendment.

The question is on the committee amendment.

The question was taken; and on a division (demanded by Mr. CONNERY) there were—ayes 48, noes 130.

So the committee amendment was rejected.

The Clerk read the following committee amendment:

On page 8, line 12, after the word "Board" insert "any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause."

The committee amendment was agreed to.

Mr. RAMSPECK. Mr. Chairman, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. RAMSPECK: On page 7, line 24, after the word "created", strike out "as an independent agency in the executive branch of the Government."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia [Mr. RAMSPECK].

The amendment was agreed to.

Mr. EKWALL. Mr. Chairman, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. EKWALL: On page 8, line 4, after the word "members", insert "no more than two of whom shall be members of the same political party."

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The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon.

The question taken; and on a division (demanded by Mr. EKWALL) there were—ayes 79, noes 97.

So the amendment was rejected.

[9726] The Clerk read as follows:

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year shall be eligible for reappointment, and shall not engage in any other business vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution No. 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution No. 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

With the following committee amendment:

Page 10, beginning in line 1, after the word "exist", strike out the remainder of the line and all of lines 2, 3, 4, 5, 6, 7, 8, and down to and including the word "hearing" in line 9.

The committee amendment was agreed to.

With the following further committee amendment:

Page 10, line 12, after the word "amended", strike out the remainder of line 12 and down to and including the word "status" in line 13.

The committee amendment was agreed to.

Mr. EKWALL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. EKWALL: Page 9, line 6, after the word "appoint", strike out the words "without regard for the provisions of the civil-service laws but subject" and insert in lieu thereof the following: "subject to the provisions of the civil-service laws and."

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The amendment was rejected.

Mr. TREADWAY. Mr. Chairman, I move that the further reading of the bill be dispensed with and that it be printed in the RECORD.

The CHAIRMAN. The Chair cannot recognize the gentleman for that purpose.

Mr. TREADWAY. Then, Mr. Chairman, I ask unanimous consent that the further reading of the bill be dispensed with.

Mr. RAMSPECK. I object, Mr. Chairman.

Mr. O'MALLEY. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. O'MALLEY. Do I understand that the motion of the gentleman from Massachusetts [Mr. TREADWAY] was to dispense with the reading of the bill and print it in the RECORD as amended by the committee?

The CHAIRMAN. That request was objected to.

The Clerk read as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Mr. RICH. Mr. Chairman, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. RICH: Page 11, line 20, after the word "protection", insert "free from coercion and intimidation from any source."

The amendment was rejected.

The Clerk read as follows:

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

With the following committee amendment:

Page 12, line 12, after "U. S. C.", insert "Supp. VII."

The committee amendment was agreed to.

Mr. TABER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

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Amendment offered by Mr. TABER: Page 12, line 11, after the word "organization", strike out the colon and all down to and including the word "made" in line 22.

Mr. TABER. This provision, Mr. Chairman, provides that 51 percent of the employees of any organization can get together and make an agreement for the discharge of the other 49 percent. I do not believe the Congress wants to go on record in favor of that sort of domination of business. It is absolutely against the interests of the employees of this country, and I hope the amendment will be adopted.

Mr. CONNERY. Mr. Chairman, I merely rise to say this in opposition: The closed-shop proposition in this bill does not refer to any State which has any law forbidding the closed shop. It does not interfere with that in any way.

The amendment was rejected.

Mr. BIERMANN. Mr. Chairman, the amendment that I have sent to the desk is an identical amendment with one that has been voted down.

Mr. DEEN. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 12, line 25, insert at the end of the line 25, the following: "It shall be an unfair labor practice for any person (a) to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in section 7; (b) to interfere with, restrain, or coerce employees in their rights to work or join, or not join, any labor organization."

Mr. DEEN. Mr. Chairman, I shall not use the 5 minutes accorded me, but I would like to call the attention of the House to this amendment. I offer it for two reasons. First, in many important industries there are Communists and Socialists whose sole purpose is to stir up trouble between employers and employees. The amendment will help the employers to protect their employees.

This amendment will not harm the laborers, and it will not harm the employers. On the contrary, it will benefit the employer and the employee. It would prevent any Communist or Socialist from coming into your community or mine and stirring up trouble by antagonizing employees against employers in a given industry. I hope the chairman [9727] of the committee will accept the amendment, and I hope that Members will vote for it.

Mr. CONNERY. Mr. Chairman, this is only another form of the Tydings amendment, and will cut the hide off of this bill. I hope that it will be voted down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia.

The question was taken and the amendment was rejected.

Mr. LLOYD. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 12, lines 2 and 3, after the word "organization", strike out "or contribute financial or other support to it."

Mr. LLOYD. Mr. Chairman, I would be derelict in my duty to the great body of the people in my district, if I did not do something to protect the integrity of the great lumber organization known as the Loyal Legion Association of Lumbermen.

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That organization was formed in 1917 at a time when no organization had even attempted to organize the lumber industry. That organization brought better working conditions for the men engaged in the lumber industry. The very structure and fabric of the 4–L organization is based on cooperation between the employer and the employee. For over 17 years that organization has had harmony in the lumber industry, and there has not been a strike for 17 years in that industry in the Northwest. I am interested only in permitting every man engaged in the lumber industry to join a union of his own choosing, but if this language, which is not necessary for the purposes of the act or for the purposes of carrying the act into effect, remains in the bill, you will have outlawed the only organization that has brought peace and better conditions to the workmen in the lumber industry in the Northwest.

Mr. KELLER. Is this to protect a company union?

Mr. LLOYD. It is not a company union. This is a union formed by the United States Government during the war, to bring peace in the lumber industry at a time when the I. W. W. had dominated the lumber industry.

Mr. KELLER. And the lumber companies have charge of it now?

Mr. LLOYD. No; it is a cooperative organization, dominated by the men themselves, with a United States district judge as the final arbiter.

Mr. GRISWOLD. Who contributes to it financially?

Mr. LLOYD. Both the company and the men.

Mr. GRISWOLD. They contribute jointly?

Mr. LLOYD. Yes.

Mr. SCHULTE. A report has been circulated throughout the Northwest, and in the gentleman's district also, that the lumberjacks today out there are the poorest paid of any in the United States.

Mr. LLOYD. They are poorly paid, but their conditions are far better than they were before the 4–L organization came into being.

The CHAIRMAN. The time of the gentleman from Washington has expired.

Mr. MOTT. Mr. Chairman, may we have the amendment again reported?

The CHAIRMAN. Without objection, the Clerk will again report the amendment offered by Mr. Lloyd.

There was no objection, and the Clerk again reported the Lloyd amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Washington.

The amendment was rejected.

The Clerk read as follows:

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

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(b) The Board shall decide in each case whether, in order to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties in writing the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

With the following committee amendment:

Page 13, after line 13, strike out all of subsection (b) including lines 14, 15, 16, and 17, and insert in lieu thereof the following:

"(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit."

The CHAIRMAN. The question is on the committee amendment.

Mr. TABER. Mr. Chairman, I offer the following substitute, which I send to the desk and ask to have read.

The Clerk read as follows:

Substitute offered by Mr. TABER: Page 13, line 14, strike out lines 14 to 17, inclusive.

Mr. TABER. Mr. Chairman, the result of this substitute amendment would be to do away with the power of the Board to decide what the unit of representation of employees should be. Under the bill, the way it is presented here by the committee and with the committee amendment as it stands, the Board could create units or districts or territory over which a single operation or decision or bargaining could take place, which would include plants where the employees did not belong to the union at all and were perfectly satisfied with their situation, and would throw them right out of employment. I do not think we ought to pass the bill with any such provision in it. I hope the committee will adopt this amendment and prevent such an outrage happening.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York in the nature of a substitute for the committee amendment.

The question was taken; and on a division (demanded by Mr. TABER) there were—ayes, 43, noes 78.

So the substitute amendment was rejected.

The CHAIRMAN. The question now is on the committee amendment.

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the other committee amendment.

The Clerk read as follows:

Page 14, line 4, after the word "hearing", insert "upon due notice."

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The CHAIRMAN. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

Mr. RAMSPECK. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. RAMSPECK: Page 13, line 23, after the word "unit", strike out the period, insert a colon and the following: "*Provided*, That no unit shall include the employees of more than one employer."

Mr. RAMSPECK. Mr. Chairman, the whole purpose of this bill, the whole theory of it is that you are giving the employees of this country the right to make their own free decision as to what union they shall belong to, or whether they shall belong to any union at all. Under the committee amendment just adopted, if I construe it correctly, the employees of a given plant might be included in a unit des- [9728] ignated by the Board, including several other plants, and forced into an agreement or under an agreement in which they had not participated, made by a union to which they did not belong and to which they did not want to belong.

I favor the right of labor to organize, and I am supporting this bill. I am speaking as a friend of labor and as a friend of the bill. As one gentleman said today, you cannot have a one-sided bill and have a fair bill. I think this amendment is a fair amendment. I think it is in the interest of organized labor and that they should not force, if any such intention exists in the committee amendment, the employees of any given plant into a union that they do not want to belong to. This amendment simply provides that there shall be no unit set up by the Board to include the employees of more than one employer. If the same employer has five or six different plants, they can put them all into one unit, but they cannot take the employees of one isolated plant and include them in a craft unit or any other sort of unit which the Board may set up without their consent and against their wishes.

I hope the Committee will adopt the amendment, because I think it will help the bill to be a success. [Applause.]

The CHAIRMAN. The time of the gentleman from Georgia [Mr. RAMSPECK] has expired.

Mr. WOOD. Mr. Chairman, I am sorry I have to disagree with the gentleman from Georgia [Mr. RAMSPECK]. I know he is honest in his belief that this amendment will improve the bill, but if the amendment is adopted it will be impossible for the national board to designate a larger unit than those employed by one employer. The coal operators and mine workers of this Nation are now engaged in working out an agreement that will affect some five or six hundred thousand coal miners of the United States. If this amendment is adopted it will preclude the power and authority of the National Labor Relations Board to have anything to do with designating a larger unit than one employer's unit, and they are represented by a number of employers.

Mr. CONNERY. Will the gentleman yield?

Mr. WOOD. I yield.

Mr. CONNERY. According to the amendment offered by the gentleman from Georgia, the United Mine Workers would have to deal with

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each separate one, and they could not unite for collective bargaining as a unit in the coal industry.

Mr. WOOD. That is very true. That is also true with the building-trades industry. They reach their agreement in the cities between the general contractors' association and the various organizations. When that agreement is signed, of course, lt covers any and all contractors who come under the agreement that are union.

Mr. RAMSPECK. Will the gentleman yield?

Mr. WOOD. I yield.

Mr. RAMSPECK. The amendment I offered does not prevent other unions joining in and making a collective agreement. The unit which the Board designates is for the purpose of selecting representatives for collective bargaining. After they are selected they can get together and make an agreement covering the whole industry, but the purpose of this committee amendment is to provide a unit in which the representatives of the employees are to be selected, and for that purpose only. It would not prevent an agreement in the mine workers because they are already organized and have already selected their representatives.

Mr. WOOD. But if the gentleman's amendment is adopted the employees can only select their representatives from that one unit. The employees could not designate a national officer to represent them.

Mr. RAMSPECK. Yes; they could. By action of their union they could do that.

Mr. WOOD. They could not represent more than one unit.

Mr. RAMSPECK. Oh, yes. This limits the Board in setting up a unit for the purpose of selecting representatives. That is all.

Mr. WOOD. I hope the amendment will not be adopted, Mr. Chairman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia [Mr. RAMSPECK].

The question was taken; and on a division (demanded by Mr. RAMSPECK) there were ayes 129 and noes 75.

Mr. CONNERY. I ask for tellers, Mr. Chairman.

Tellers were ordered, and the Chair appointed Mr. CONNERY and Mr. RAMSPECK to act as tellers.

The committee again divided; and the tellers reported there were ayes 127 and noes 87.

So the amendment was agreed to.

Mr. ELLENBOGEN. Mr. Chairman, I rise to change my vote from "no" to "aye," and for the purpose of making a motion to reconsider the vote.

The CHAIRMAN. The Chair will state to the gentleman from Pennsylvania that such a motion is not in order in Committee of the Whole.

The Clerk will read.

The Clerk read as follows:

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

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(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than 5 days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing for the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency, or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either **[9729]** party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evievidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court

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shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinbefore provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C. title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and shall in like manner to make and enter a decree enforcing, modifying, or setting aside, in whole or in part, the order of the Board, and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the act entitled "An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, sec. 101–115).

(i) Petitions filed under this act shall be heard expeditiously, and if possible within 10 days after they have been docketed.

With the following committee amendments:

On page 15, line 20, strike out the word "appear" and insert the word "intervene."

In line 21, after the word "proceeding", insert the word "and".

Page 16, line 24, strike out "If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may," and insert "The Board shall have power to."

Page 17, line 19, strike out the word "shall" and insert the word "to."

Page 17, line 21, after the word "modifying", insert "and enforcing as so modified."

Page 19, line 20, strike out all of lines 20 and 21 and insert "and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order."

Page 20, line 9, after the word "modifying", insert "and enforcing as so modified."

Page 20, line 14, strike out "(U. S. C.," and insert "approved March 23, 1932 (U. S. C. Supp. VII."

The committee amendments were agreed to.

Mr. HALLECK. Mr. Chairman, I offer an amendment.

The clerk read as follows:

Amendment offered by Mr. HALLECK: Page 15, line 23, after the word "shall" strike out the word "not."

Mr. HALLECK. Mr. Chairman, I want briefly to call attention to what this amendment would do. If the bill becomes law a national labor relations board is set up which, as I understand it, will be a quasi-judicial body charged with hearing and determining certain

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questions of fact which may be presented to it. It is provided in subsection (b) of section 10:

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect.

It is further provided that the board shall thereupon hear witnesses and take testimony with a view of determining whether or not there have been unfair labor practices.

The particular provision to which I object reads as follows:

In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

I propose to strike out of that sentence the word "not" and to provide thereby that the general rules of evidence applying in courts of law and equity shall prevail. My idea is simply this, that the board is charged with the duty of determining questions of fact. In my view these facts should be established as any fact is established in any court, by competent evidence. I do not mean evidence circumscribed by technical rules, but I do mean that it should be evidence of fact as distinguished from hearsay, rumors, or reports; that the persons who are there present and testifying shall testify to such facts as shall establish the charge.

Further in this connection, a considerable point is made in the report of the committee to the effect that when an appeal is taken or the order is taken to the United States Court it is not tried de novo but is tried upon a transcript of the proceedings and the testimony and the evidence before the board.

[Here the gavel fell.]

Mr. CONNERY. Mr. Chairman, I rise in opposition to the gentleman's amendment merely to state that it has been clearly set out during many years why it was necessary to do away with the ordinary rules of evidence when it came to administrative boards of the United States Government. In hearings before these boards one is not dealing with a jury. Evidence presented before these boards, therefore, should not be circumscribed with all the technical rules of admissibility which have been found necessary in presenting evidence to juries.

I call the attention of Members to the fact that in the case of the Interstate Commerce Commission, the Federal Trade Commission, and the Workmen's Compensation Board the usual rules of the admissibility of evidence do not apply.

I hope the amendment is defeated.

The CHAIRMAN. The question is on the amendment of the gentleman from Indiana.

The question was taken; and on a division (demanded by Mr. HALLECK) there were—ayes, 84, noes 117.

So the amendment was rejected.

Mr. TABER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TABER: Page 15, line 2, after the word "code," strike out the word "law."

Mr. TABER. Mr. Chairman, I want to ask the chairman of the committee if he will not accept this amendment. It seems as though,

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were he really anxious to improve the bill, he would accept this amendment.

Mr. CONNERY. I will say to my friend that ordinarily I would be glad to accept an amendment of this sort, but the word "code" can mean something else besides an N. R. A. code.

Mr. TABER. I am just trying to strike out the word "law."

Mr. CONNERY. No; I think we better leave the language of the section as it is written. We have had a number of constitutional lawyers studying this bill for weeks, and I think it is a pretty good bill.

Mr. TABER. Mr. Chairman, that indicates the attitude of the committee with reference to this bill. They want it just as bad as it can be. If a law is passed, of course, changing any rule with reference to this bill, that law would supersede this. The fact this word is in there indicates they are trying to do something that is impossible. I hope this amendment will be adopted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York.

The amendment was rejected.

[9730] The Clerk read as follows:

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which in the opinion of the Board are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the

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same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

LIMITATIONS

SEC. 13. Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (l) and (m) of the act approved June 7, 1934, entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, and acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution No. 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this act, this act shall prevail: *Provided*, That in any situation where the provisions of this act cannot be validly enforced, the provisions of such other acts shall remain in full force and effect.

With the following committee amendment:

Page 24, line 7, insert the words "Supp. VII," and on page 24, line 8, strike out "(b)" and insert "B."

The committee amendments were agreed to.

Mr. BIERMANN. Mr. Chairman, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. BIERMANN: On page 24, strike out section 13 and substitute the following language: "Nothing in this act shall be construed so as to diminish the right to strike before an agreement has been made between the employer and the duly authorized representatives of the employees. After that agreement has been made, and so long as it shall be observed by the employer, a strike shall be considered as a violation of the spirit of this act."

Mr. BIERMANN. Mr. Chairman, I merely want to read the section as it is now and the amendment which I offer in its place. The section as it reads now is:

Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

I offer as a substitute these words:

Nothing in this act shall be construed so as to diminish the right to strike before an agreement has been made between the employer and the duly authorized representatives of the employees. After that agreement has been made, and so long as it shall be observed by the employer, a strike shall be considered as a violation of the spirit of this act.

Mr. CONNERY. Mr. Chairman, I rise in opposition to the amendment.

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Mr. Chairman, this is another amendment like the Tydings amendment that would hamstring this bill. It would take the heart right out of it and kill the bill. It is another way of interfering with labor's right to strike, which is not a right that comes from Congress, but is a divine right which comes from the Almighty God.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa [Mr. BIERMANN].

The question was taken; and on a division (demanded by Mr. BIERMANN) there were—ayes 115, noes 109.

Mr. CONNERY. Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chair appointed Mr. CONNERY and Mr. BIERMANN to act as tellers.

The Committee again divided; and the tellers reported there were ayes 107 and noes 140.

So the amendment was rejected.

Mr. CONNERY. Mr. Chairman, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. CONNERY: On page 24, at the end of line 20, insert a new section, as follows: "Nothing in this act shall abridge the freedom of speech or the press as guaranteed in the first amendment of the Constitution."

The amendment was agreed to.

The Clerk read as follows:

SEC. 15. If any provision of this act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This act may be cited as the "National Labor Relations Act."

Mr. CONNERY. Mr. Chairman, I ask unanimous consent that the Clerk may be given permission to renumber the sections.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The CHAIRMAN. Under the rule the Committee rises.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. ARNOLD, Chairman of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, under the resolution (H. Res. 263), he reported the same back to the House with sundry amendments agreed to in committee.

The SPEAKER. Under the rule, the previous question is ordered on the bill and amendments to final passage.

Is a separate vote demanded on any amendment? If not, the Chair will put them in gross.

The amendments were agreed to.

[9731] The bill was ordered to be read a third time, and was read the third time.

Mr. HARTLEY. Mr. Speaker, I offer a motion to recommit.

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The Clerk read as follows:

Mr. HARTLEY moves to recommit the bill to the Committee on Labor with instructions to that committee to refer the bill back to the House forthwith with the following amendment: On page 11, line 20, after the word "protection", insert the following: "free from coercion or intimidation from any source."

Mr. CONNERY. Mr. Speaker, I move the previous question on the motion to recommit.

The previous question was ordered.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

Mr. TABER. Mr. Speaker, on that I ask for the yeas and nays.

The SPEAKER. The Chair will count. [After counting.] Twenty Members have risen. Not a sufficient number.

The yeas and nays were refused.

The question was taken, and the bill was passed.

A motion to reconsider was laid on the table.

The title was amended to read as follows: "An act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes."

EXTENSION OF REMARKS—WAGNER-CONNERY LABOR-DISPUTES BILL

Mr. SCHNEIDER. Mr. Speaker, since the beginning of this session of Congress I have favored the passage of an adequate bill guaranteeing the right of labor to organize and bargain collectively, and wiping out the inequalities in bargaining power between the employer and employee. I believe that the Wagner-Connery labor-disputes bill, which has been favorably reported by the House Labor Committee, upon which I have had the privilege of serving, will do much to accomplish these purposes and to prevent industrial unrest. I am heartily in favor of its passage now by the House and am opposed to amendments which will hamstring its enforcement.

This bill strengthens the guaranties to labor of the right to organize and bargain collectively, as originally provided in the National Industrial Recovery Act. By this legislation we state clearly that—

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

The bill further defines these rights by prohibiting the following unfair labor practices on the part of the employers:

First. Restraint or coercion of employees in the exercise of their rights to organize and bargain under the section quoted above.

Second. Domination or interferences with the formation or administration or contribution of financial or other support to labor organizations.

Third. Discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in labor organization. "A reservation is made of the right of the employers and employees to make voluntary contracts to operate under a union-shop agreement."

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Fourth. Discharge or other discrimination against an employee because he has filed charges or given testimony under this law.

Fifth. Refusal to bargain collectively with the representatives of the employees, who are selected by a majority vote, in respect to rates of pay, wages, hours of employment, and other conditions of employment. Employees other than the designated representatives, individually or otherwise, may present grievances.

The principal objection to the bill has been to this section defining unfair trade practices. The chief misrepresentations relative to these provisions alleged that they compel closed-shop conditions.

A careful analysis of this bill will show, however, that there is no requirement by governmental regulation that shops be unionized but, merely a guarantee of the right of the workers, however organized, to determine by a majority vote who shall represent them in negotiations on rates of pay, wages, hours of employment, and other conditions. The closed shop may be established only in those cases where the employer and employee voluntarily operate on this basis.

The bill provides further for creation of a National Labor Relations Board, a quasi-judicial group with three members, which is given authority to investigate industrial disputes, discrimination, and other violations of the law. If, after proper notice and hearings, the Board finds that any concern has been engaging in any of the unfair labor practices listed, it has authority to issue orders prohibiting such violation of the law and may take affirmative action to enforce its orders. It may order reinstatement of employees unfairly treated in violation of the law, with or without back pay.

Penalties are provided for failure to observe the law, and provision is made for enforcement through the courts. Many of the legal technicalities are waived in connection with the procedure of the Board, and representatives of the Board are authorized to hear disputes in various parts of the country, so it is unnecessary for a worker to journey to Washington to present his case.

As indicated in the preamble of the bill, this legislation is necessary to equalize the rights and privileges of workingmen and their employers by removing the inequalities in bargaining power. It also aims to give the worker full freedom of association with a view and for the purpose of securing an agreement on any matter in dispute in the relationships of the employer and the employee.

Since the great expansion of our industrial system, the laborer has become only a small cog in the vast industrial machinery, and an attempt is made here to preserve his right to stand on an equal footing with the employer in making a contract for the sale of his services and regulating the conditions under which he works. I urge the enactment of this bill by the House.

While those of us who favor the bill are very hopeful that it will accomplish all the purposes intended, its success will depend upon the character of the members of the Board appointed by thePresident and the thoroughness and firmness with which they administer the act.

Mr. GILDEA. Mr. Speaker, eternal vigilance is the price American workingmen must pay for economic freedom. The strong right hand of labor must always be on the alert to stave off the armed forces of aggrandizement, and unfortunately, labor must be equally as vigilant

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to safeguard its interest from the mistakes of those who pose as well-meaning friends.

The Wagner-Connery labor-disputes bill was hailed as new Magna Carta for organized labor. It was looked upon as a measure restoring lost teeth to section 7 (a) of the National Recovery Act, but the teeth have been for the time being pulled out and the intention of the labor- disputes bill has been as completely turned aside by amendments as section 7 (a) was nullified by the Richberg interpretation, and if the amendments tacked onto the bill are permitted to remain therein the bill itself will be as powerless as N. R. A. after the Supreme Court decision had replaced the Blue Eagle with a stuffed chicken.

The same forces are at work today and within the circle of labor's friends originate the harmful amendment, just the same as the interpretation on section 7 (a) in the Motor Code case was made by a recognized friend of labor.

The amendments tacked onto the labor-disputes bill were no bright little ideas that came spontaneously to their authors as they sat in their seats on the floor of the House.

The major amendment would prevent the new National Labor Relations Board from recognizing as a collective-bargaining unit any group consisting of employees of more than one employer.

[9732] Coal miners in my home district would be compelled to deal with each individual employing company and the principle of collective bargaining, established through 35 years of untiring effort, would be wiped out by congressional action in a bill supposedly drawn up in the interest of the working class.

The amendment strikes a damaging blow against national unions which labor through its own effort has created and degenerates into an extension of the Government-union idea, one union for each plant.

The open shop would be restored, chaos in industries such as mining would ensue, and protection would be given the chiseler instead of support and protection being given the organized workers of each separate craft.

Business, as well as labor, is better off when wage conditions are uniform in an industry.

The Senate and the House conferees must strip the amendments from the Wagner-Connery bill.

Labor must insist on a roll-call vote as its one and only safeguard against under cover effort on the part of the opposition to defeat its program.

Real friends of labor, such as Senator WAGNER and the Chairman of our own House Labor Committee, BILL CONNERY, can be counted upon to strike out the damaging amendments in conference and then it behooves all of us to stand up and be counted in defense of the conference report and in support of the principle of collective bargaining recognized and established as a national policy through the Labor Relations Board.

Labor looks for the support and backing of every Roosevelt Democrat on this side of the aisle. Labor appreciated the aid given this bill by true-hearted liberals on the other side of the aisle, who were among the staunchest supporters of the bill.

The combined strength of both forces is needed to smoke out the opponents, and there is just one way to make this bill a power for

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good—strip the bill of its nullifying amendments and give the newly created Labor Board a complete set of sound teeth with which to enforce regulations, and then through Government recognition of the rights of labor weld the manpower of the Nation into a united force working for the general welfare of our people and the permanent recovery of our Nation.

EXTENSION OF REMARKS

Mr. O'MALLEY. Mr. Speaker, I ask unanimous consent to include in the revision of my remarks a letter I wrote to employers on the Wagner-Connery labor bill.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

EQUALITY OF RIGHTS AND OPPORTUNITIES AMONG WAGE EARNERS

Mr. BEITER. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include therein a statement issued by the junior Senator from New York [Mr. WAGNER] on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. BEITER. Mr. Speaker, today the feeling against trade unionism has narrowed down to the issue against the closed shop. That term, if not positively unfair, is unfortunate. It is an appeal to sentiment, not to right reason. The closed shop is the union shop, or contract shop, for it is founded on a contract between the employer and the union authorized to speak for his employees.

Freed from all complications, what is the closed-shop issue? It has two sides, one legal the other economic and practical. A well-organized union offers to supply all the labor that an employer needs in a certain line. It proposes a contract covering wages, hours, and so forth. It is based on the principle of collective bargaining and, as a necessary corollary, collective responsibility. The union guarantees efficient and good work on the part of the employees. It cannot assume responsibility for outsiders, having no control over them.

It asserts that a shop cannot be half union and half nonunion and, therefore, it asks the employer who is willing to recognize the union at all, and with it the principle of collective bargaining, to agree to employ none but union labor. The union shop, in other words, is to be closed to nonunion workmen, not only in the interest of the contracting employees, but also in the interest of the employer.

It is clear that in America industrial peace must be based upon reason rather than force. We have always cherished the ideal of employers and workers working together with friendly and open minds in order that they may exchange views and arrive at solutions grounded not in compulsion but in mutual concessions and mutual benefits. This may be termed the method of conference, of give and take, of free cooperation.

The railway industry is the best example of the conference or voluntary method of ironing out industrial disputes between employers and

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employees. In this industry, the Government long ago sponsored the device of "secret elections of representatives" for collective bargaining in which the principle of majority rule applied.

In practice it was discovered that majority rule was best for employers as well as employees. Workers found it impossible to approach their employer in a friendly spirit if they remained divided among themselves. Employers likewise found it more satisfactory to confer voluntarily with a united and contented group of workers than with a group torn by internal dissension. Singleness of purpose and responsibility on each side gave to business transactions that stability which every employer desires.

Another necessary condition of peace was that the representatives of the workers should gain their confidence by representing them alone, just as an advocate in court speaks only for one side. Hence the railroad industry completely outlawed the sham union which was financed and controlled by the employer.

The right of every man to sell his labor as he sees fit is exactly the right on which the closed shop is based. The right to work and to contract for work includes the right to refuse to work except under certain conditions, and the nonemployment of certain classes of labor may very well be one of these conditions.

The right of the nonunion man is not infringed upon when the unionist merely refuses to work beside him or when he asks the employer to choose between them. As to the employer, he has a right to hire anyone he pleases, and he may discriminate at will against union and nonunion labor. Indeed, he lays great stress upon this right; and should he desire to make a contract with a union, what is to prevent such preference?

The reasons that appeal to a union man for not working with a nonunion man are manifest and obvious. Men instinctively love the society of their kind, whether in work or play, and the man who desires the society of his companions must arrange his life so that his associates are content to live with him.

Trade unionists have for centuries believed that they were upholding the rights of men, protecting the welfare of their class, and promoting the interests of their homes; that without the union shop, their liberty and their independence would be gone. This is not a fact of trade unionism alone, but a deep abiding fact in human life. In the last analysis, it is the law of self-defense; and employers have exactly the same feeling toward one of their members who gives his influence to the other side. Both feel that the offending man is disloyal to his class, and just so long as industry is carried on by two classes in hostile camps, this feeling must and will continue.

A nation goes to war to protect one of its subjects; so the union makes it its duty and concern to preserve the rights of its humblest member. This can be done only by masses of men and women who are willing to stand or fall together.

Already this responsibility for man to man has been laid upon workmen by the law. Though the employer insists **[9733]** that he alone has the absolute right to employ or discharge at will, yet the courts have always insisted that it is the workman who is responsible for the negligence and lack of skill of his fellow workman, and it is he who must assume this burden or give up his employment.

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The land is full of cripples, widows, and orphans whose injuries are caused by the negligence of some fellow servant whom the employer forced upon the workman; and these cripples, widows, and orphans are turned out without redress, without protection, upon the legal theory that each workman is responsible for his fellows.

The battle for trades unions has been long and bitter, and most of their rules and conditions are really founded on necessity, and are right and just in the light of experience. A close study would show that few rules established by the unions are severe or arbitrary. They have arisen in the heat of conflicting interests, and from the necessity of dealing with watchful and unscrupulous enemies.

The history of trades unionism is the history of the progress of the common people toward the comparative independence which they enjoy today; it is one long tale of struggles, defeats, and victories, and every step in their progress has been fought against stubborn and powerful opposition.

The closed shop is the only sure protection for trade agreements and for the defense of the individual. The open shop destroys organization, and in reality is the open door through which the union man goes out and the nonunion man takes his place. The open shop means uncertainties, anxiety, and a shifting basis for the principles of industry. Under the open shop, the easy job goes to the nonunion man, to the friend of the employer; the hard and dangerous task to the man whose devotion to his fellows incurs the enmity of the boss.

I am convinced that the old dog-eat-dog competition between business and business and between employer and employee is the way of destruction. That system has produced many depressions in the past, and progressively worse and longer depressions. If human experience is any guide, that old system, if allowed to continue, will produce even worse havoc in the future. It will destroy itself, as it almost destroyed itself last time.

War and strife are not ideal states, but so long as the struggle of classes continue, the weak and helpless must look to trades unionism as their most powerful defender.

This bill is intended to give to labor the effective use of its right to organization. The provisions of this bill are intended to restate labor's bill of rights and to make them effective as applied under modern conditions of industry. It is not designed to meet the present national emergency only. It is intended for all time.

Because of the vital importance to national recovery of equality of rights and of opportunities among wage earners as well as employers and other citizens, I trust you will support this measure, for if it fails of passage it will be evident that labor was misled by Congress when section 7 (a) was originally enacted and that labor's right to trade-union organization does not and is not intended to compare with the employer's right to collective action through organization.

Mr. Speaker, I tender a statement of the junior Senator from New York, the Honorable ROBERT F. WAGNER, published in the Washington Daily News this afternoon. It discusses the important features of the bill now before us for consideration, and is very informative.

The majority of criticisms against the national labor relations bill spring from misinformation about its provisions and purposes.

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First, there is the charge that the measure would regiment men in national unions. On the contrary, the bill gives added protection to workers who wish to exercise their free choice to remain completely unorganized. It provides specifically that no worker can be discharged or paid lower wages or discriminated against in any way because he refused to join any labor union of any kind.

DOES NOT FORCE UNIONISM

Second, there is nothing in the bill which favors the closed shop. It provides merely that closed-shop agreements may be made, but only in those States where they are now legal, by voluntary agreements between employers and employees. In fact, the bill somewhat narrows the now existing law sanctioning such agreements by stipulating that they shall be valid only when desired by the employer and the majority of the workers to be covered by them.

Finally, it has been argued that the bill, in order to be fair, should protect employees from "coercion" not only by employers, but by other employees as well. This argument neglects the simple objectives of the bill.

All the bill intends is to provide that employers shall not interfere with the self-organization of workers. Certainly employers already possess the right of self-organization without interference by employees; thus the bill aims at equality, not inequality.

SUPERVISION NOT SOUGHT

To supervise the activities of employees among themselves would be as foreign to the purposes of the legislation as to supervise the activities of employers among themselves. The bill does neither.

To saddle upon the National Labor Relations Board the duty to prevent "coercion" by labor unions or employees would create a superfluous remedy for wrongs simply dealt with today by police courts and by injunctive relief in Federal and State courts, and in addition it would destroy the usefulness of the Board by overwhelming it with petty complaints.

Moreover, in view of court decisions, the prohibition of "coercion" by employees would give new congressional sanction to those many old decisions which have banned peaceful picketing, the mere threat to strike, and even the circularization of banners, on the ground that they were "coercive." This in effect would repeal the Norris-LaGuardia Anti-Injunction Act, and instead of promoting the freedom of the worker would drive him back into the bondage that existed before that humane piece of legislation was enacted.

WAGNER-CONNERY LABOR-DISPUTES BILL

[9736] Mr. LESINSKI. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the Wagner-Connery bill.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. LESINSKI. Mr. Speaker, when section 7 (a) was written into the National Recovery Act for collective bargaining, the manufacturers immediately got busy to discredit all of the standard unions and independent unions and attempted to organize their own company unions, which, of course, would be dominated by themselves.

They had spent large sums of money and have placed in charge of organizing all such company unions in the hands of their own selected men, which of course is contrary to the law. The manufacturers were permitted to draw up their own codes and yet they were not satisfied with such arrangement but made a great effort to break down the morale by giving out misstatements to the press, and especially when the labor attempted to have an investigation made of the automotive industry. A report was drawn up known as the Henderson-Lubin report and which report I personally thought would be a whitewash for the manufacturers, but on the contrary,

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to my surprise the report was in favor of the employees for the whole automotive industry.

Immediately thereafter, the mouthpiece of the automotive industry, Mr. William S. Knudsen, of the General Motors Corporation, made a statement in behalf of all the automobile makers citing figures from the automotive record and attempted to disprove the Henderson-Lubin report which attacked the practices of the industry. He followed with a statement, stating "that the men who made the report had no previous experience in the industry and some who did the major work had never been in an automobile plant."

When testimony was being taken before the Labor Committee, to the effect that men over 40 years of age were being discarded as fast as possible, Mr. Knudsen stated that their company employed more than 90,000 men over 40 years of age and that their seniority rights were protected.

I happen to know personally, having lived in Detroit the greater part of my life, which is the center of the automotive industry, that men over 40 years of age are being discharged and younger men employed in their place for the reason that the younger man can get more work out and can keep up more easily with the established speed-up system. However, this same young man who has taken the place of the man 40 years of age, when he attains the age of 40, he is worn out, old, and positively no seniority rights are allowed him.

Recently when an election was held in the city of Detroit in the automotive industry, where the employees had the right to designate who would represent them, the employer saw to it that the men voted for company unions, dominated by the manufacturers, or the men did not vote at all, and when the election was over the manufacturers released to the press a statement that "the American Federation of Labor had no hold on the employees of the automotive industry." However, they did not state the true facts and that they had employed many new men in the industry and did not hire any men who either were members of an independent union or the American Federation of Labor. To prove that this practice was absolutely true, during the time of the election, when notices were posted in the plant of the Dodge Bros. at Detroit, that representatives were to be elected to represent the workers and that a mass meeting was to be held on the following Sunday, the notices were torn down and a bulletin substituted in its place, which reads as follows:

To all employees:

Attention is directed to the fact that it is a direct violation of the company's rules for employees to pass out hand bills, papers or cards of any sort for political or other purposes, or to make solicitations in the plants.

It is also against the rules of the company to post notices on bulletin boards without first securing the consent and approval of the management's special representative.

(Signed) DODGE BROTHERS CORPORATION.
Division of Chrysler Corporation.

The records will show which disprove the statement made by Mr. Knudsen, that in 1904, 1,291 man-hours were required to build an automobile. That in 1919, 313 man-hours were required; in 1929, 92 man-hours were required to build an automobile. But the most striking feature of the automobile industry is, that when it worked under the N. R. A. they cut the hours to 40 hours to build an automobile; in

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other words, they speeded up the machinery to such an extent that they actually made slaves out of the workers, and naturally a man was unable to stand the strain and was discharged immediately and replaced with a younger man.

The reason I am citing the automobile industry is that I am well acquainted with the situation; however, this applies to all industry that employs man power. This same procedure has been carried out in the oil industry; while working under the code, which called for 40 hours per week, they paid men for 40 hours but made them work as high as 72 hours and forced the employees to sign weekly slips to the effect that they only worked 40 hours.

Since the decision of the Supreme Court, which I personally think has been only arbitrary, all of the good which had been accomplished for the actual worker and employee under section 7 (a) has not only been wrecked by the decision, but the chain stores immediately cut wages of their employees and extended the hours. In chain drug stores, where the minimum wage was $25 per week, men were immediately cut to $15 per week and their hours lengthened and one or two employees were discharged.

This is the same in chain grocery stores, where a minimum wage of $15 per week was paid. In each individual case where a store belonged to a chain store then hours were extended and the wages cut as low as $8 per week and several clerks were released on account of extension of hours for the employees that were retained in that particular store.

To strengthen the hands of the administration, the Wagner-Connery bill, when it becomes a law, will force the manufacturers and employers to abide by the law for the benefit of all employees. Time has come that the large interests and special privileged interests must be disseminated and the control of the country placed in the hands of the people, and small business must again be revived; however, all of this can only be accomplished by legislation and the passage of the Wagner-Connery bill, which, I believe, is the first step toward giving the employee the right he has fought for for the past hundred years.

There is no doubt that the greedy manufacturers will attempt at all times to break down the morale of this law, but the teeth they have put into this bill will force them to keep their hands off the employee and let him belong to any organization he wants to and will not allow the employer to coerce the employee into voting to keep their own racket going, as the bill has been written in such a way that the majority of the employees will have the right to belong to such labor organizations as they see best, and the minority groups will have to abide by the decision of the majority.

CONGRESSIONAL RECORD, SENATE—JUNE 20, 1935
(79 Cong. Rec. 9742)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had passed the bill (S. 1958) to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

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CONGRESSIONAL RECORD, SENATE—JUNE 20, 1935
(79 Cong. Rec. 9778)

NATIONAL LABOR RELATIONS BOARD

The PRESIDING OFFICER. Will the Senator withhold his motion for a moment to enable the Chair to lay before the Senate the amendments of the House to a Senate bill?

Mr. GEORGE. Certainly.

The PRESIDING OFFICER. The Chair lays before the Senate the amendments of the House of Representatives to the bill (S. 1958) to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a national labor relations board, and for other purposes.

Mr. WALSH. I move that the Senate disagree to the amendments of the House, request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. WALSH, Mr. MURPHY, Mr. MURRAY, Mr. BORAH, and Mr. LA FOLLETTE conferees on the part of the Senate.

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74TH CONGRESS
1ST SESSION

S. 1958

IN THE SENATE OF THE UNITED STATES

MAY 13 (calendar day, JUNE 21), 1935

Ordered to be printed with the amendments of the House of Representatives numbered

AN ACT

To promote equality of barganing power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND (1) ~~DECLARATION OF~~ POLICY

(2) ~~Section 1. The inequality of bargaining power between employer and individual employees which arises out of the organization of employers in corporate forms of ownership and out of numerous other modern industrial conditions, impairs and affects commerce by creating variations and instability in wage rates and working conditions within and~~

~~between industries and by depressing the purchasing power of wage earners in industry, thus increasing the disparity between production and consumption, reducing the amount of commerce, and tending to produce and aggravate recurrent business depressions. The protection of the right of employees to organize and bargain collectively tends to restore equality of bargaining power and thereby fosters, protects, and promotes commerce among the several States.~~

~~The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial unrest which burden and affects commerce. Protection by law of the right to organize and bargain collectively removes this source of industrial unrest and encourages practices fundamental to the friendly adjustment of industrial strife.~~

~~It is hereby declared to be the policy of the United States to remove obstructions to the free qow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the~~

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~~exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.~~

SECTION 1. THE denial by employers of the right of

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employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing interstate and foreign commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of interstate and foreign commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

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Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of interstate and foreign commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of interstate and foreign commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by the worker of full freedom of association, self-

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organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of

dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, (3) ~~or commerce, or any transportation or communication relating thereto,~~ *commerce, transportation, or communication* among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in

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the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(4) ~~(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.~~

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183) (5), *and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 approved June 14, 1935.*

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created (6) ~~as an independent agency in the executive branch of the Government~~ a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall

be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall

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be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. (7) *Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.*

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappoint-

ment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of concilation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist (8)~~; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old~~

~~Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect~~

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~~unless modified, superseded, or revoked by the Board after due notice and hearing.~~ All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended (9)~~, without acquiring by such transfer a permanent or civil service status.~~ All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies

as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant

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to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., (10) *Supp. VII*, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

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REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(11) (~~b~~) ~~The Board shall decide in each case whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.~~

(*b*) *The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.*

(c) Whenever a question affecting commerce arises concerning the representation of employes, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have

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been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing (12) *upon due notice*, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

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(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to (13) ~~appear~~ *intervene* in the said proceeding (14) *and* to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed

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with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon

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all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) (15) ~~If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may~~ *The Board shall have power to* petition any circuit court of appeals of the United States (including

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the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the preceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and (16) ~~shall~~ *to* make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, (17) *and enforcing as so modified,* or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency,

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shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the

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Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the count may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs, 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief

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sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, (18) ~~and shall in like manner to make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order~~ *and in like manner to make and enter a decree enforc-*

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ing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

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(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, (19) *and enforcing as so modified* or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (20) ~~(U. S. C.,~~ *approved March 23, 1932* (*U. S. C., Supp. VII*, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evi-

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dence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia,

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within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give

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testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses sum-

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moned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

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SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

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SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., (21)*Supp. VII*, title 15, sec. 707 (a)), as amended from time to time, or of section 77 (22)~~(b)~~ *B*, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled An "Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

(23)*Sec. 15. Nothing in this Act shall abridge the freedom of speech, or of the press, as guaranteed in the First Amendment to the Constitution.*

SEC. (24)~~15~~ *16*. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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SEC. (25)~~16~~ *17*. This Act may be cited as the "National Labor Relations Act."

Amend the title so as to read: "An Act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes."

Passed the Senate May 13 (calendar day, May 16), 1935.

Attest: EDWIN A. HALSEY,
Secretary.

Passed the House of Representatives with amendments June 19, 1935.

Attest: SOUTH TRIMBLE,
Clerk.

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CONGRESSIONAL RECORD, HOUSE—JUNE 21, 1935

(79 Cong. Rec. 9864)

NATIONAL LABOR RELATIONS BOARD

Mr. CONNERY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 1958) to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes, insist on the House amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts? [After a pause.] The Chair hears none and appoints the following conferees: Messrs. CONNERY, RAMSPECK, GRISWOLD, WELCH, and LAMBERTSON.

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74TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 1371

[1]

NATIONAL LABOR RELATIONS BOARD

June 26, 1935.—Ordered to be printed

Mr. CONNERY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1958]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its amendments numbered 9, 23, 24, and 25.

That the Senate recede from its disagreement to the amendments of the House numbered 1, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, and agree to the same.

Amendment numbered 2:

That the Senate recede from its disagreement to the amendment of the House numbered 2, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION *1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods*

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from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

[2] *The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.*

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

And the House agree to the same.

Amendment numbered 11:

That the Senate recede from its disagreement to the amendment of the House numbered 11, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

(b) *The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining*

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shall be the employer unit, craft unit, plant unit, or subdivision thereof.

And the House agree to the same.

WILLIAM P. CONNERY, JR.,
ROBERT RAMSPECK,
GLENN GRISWOLD,
RICHARD J. WELCH,
W. P. LAMBERTSON,
Managers on the part of the House.

DAVID I. WALSH,
ROBERT M. LA FOLLETTE, JR.
JAMES E. MURRAY,
WILLIAM E. BORAH,
LOUIS MURPHY,
Managers on the part of the Senate.

[3] STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill (S. 1958) to create a National Labor Relations Board, and for other purposes, submit the following statement of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The conference agreement accepts the first House amendment, striking out from the caption to section 1 the words "declaration of," so that the caption now reads "findings and policy." The omitted words were superfluous.

The Senate receded from its disagreement to House amendment no. 2 and the conferees agreed upon the same with minor amendments. The House redrafting of section 1 was thought by the conferees to contain a better statement of the jurisdictional basis of the bill. The conference struck out the words "interstate and foreign" modifying the word "commerce" appearing at four places in the section. The word "commerce" is defined in subsection 6 of section 2 as meaning interstate and foreign commerce. It is therefore confusing to use the adjectives "interstate and foreign" in various places in section 1, especially when these adjectives are not consistently used each time the word "commerce" appears in the section. The slight verbal change at the end of section 1 simply uses the plural to conform to the use in the preceding paragraphs of the section and in conformity with the general statement of rights in section 7.

The conference agreement accepted House amendment no. 3 as constituting a more accurate definition of the term "commerce." As

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originally defined in subsection 6 of section 2 the term included "any transportation or communication relating thereto." This was thought to be too broad a statement.

House amendment no. 4 effects a minor change in subsection 7 of section 2 by removing a tautological phrase. The idea is preserved in the phrase "tending to lead to a labor dispute," etc. The conference agreement accepts this amendment.

When the Senate passed S. 1958 it was assumed that the bill would become a law before June 16, 1935, on which date the National Labor Relations Board, created pursuant to Public Resolution 44, Seventy-third Congress, expired. Meanwhile, the President by a new Executive order of June 15, 1935, reestablished and continued the Board in existence, pursuant to his authority under title I of the National Industrial Recovery Act, as amended. House amendment no. 5 makes it clear that the term "old Board" as defined in subsection 11 of section 2, describes the Board which is at present in existence. This amendment is important in view of the provision at the end of section 4 (b) transferring to the Board to be created by S. 1958 the unexpended funds and appropriations of the old Board. The conference agreement accepts this amendment.

[4] Section 3 (a) of the Senate bill provided:

> There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the "National Labor Relations Board."

House amendment no. 6 strikes out the phrase "as an independent agency in the executive branch of the Government." The Board as contemplated in the bill is in no sense to be an agency of the executive branch of the Government. It is to have a status similar to that of the Federal Trade Commission, which, as the Supreme Court pointed out in the *Schechter* case, is a quasi-judicial and quasi-legislative body. The conference agreement accepts this amendment.

The conference agreement accepts House amendment no. 7, stating specifically the circumstances under which a member of the Board may be removed. This amendment is desirable in the light of the decision of the Supreme Court in *Rathbun* v. *U. S.*, decided May 27, 1935, involving the removal by the President of Commissioner Humphreys of the Federal Trade Commission. If Congress in creating the Board vests the appointing power in the President it might be implied that it is intended to vest also in the President a general power of removal as an incident to the power to appoint. This inference is negatived by an express provision stating the conditions under which a member of the Board may be removed. Similar provisions are found in the Railway Labor Act of 1934 and the Federal Trade Commission Act.

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House amendment no. 8 strikes out from section 4 (b) the provision continuing the court proceedings and orders of the old Board. The conference agreement accepts this amendment. All cases of the old Board pending in the courts have already been dropped at the direction of the Attorney General, in view of the *Schechter* case which invalidated the codes of fair competition as having been founded upon an improper delegation of legislative power to the President. Section 7 (a) which was the basis of the old Board's activity became inoperative, because section 7 (a) was effective only insofar as its provisions were inserted in the codes.

Section 4 (b) of the Senate bill provided that all employees of the old Board should be transferred to and become employees of the Board "without acquiring by such transfer a permanent civil service status." House amendment no. 9 proposed to strike out this quoted phrase. The conference agreement rejects the House amendment and reinstates the language of the Senate bill. The result is that all employees of the old Board will be carried over as provided in the Senate bill but such transfer will not of itself confer a civil-service status upon such employees of the old Board as have not now such status. The conferees thought that employees of the old Board should not be blanketed into the civil service without the usual formalities provided by law.

The conference agreement accepted House amendment no. 10 as constituting a more accurate citation of the National Industrial Recovery Act.

House amendment no. 11, which redrafted section 9 (b), embodied two changes from the Senate bill. The first change undertook to express more explicitly the standards by which the Board is to be guided in deciding what is an appropriate bargaining unit. The conference agreement accepts this part of the amendment. The [5] amendment also added a proviso designed to limit the otherwise broad connotation that might be put upon the phrase "or other unit." The proviso, however, was subject to some misconstructions, and the conferees have agreed that the simplest way to deal with the matter is to strike out the undefined phrase "other unit." It was also agreed to insert after "plant unit" the phrase "or subdivision thereof." This was done because the National Labor Relations Board has frequently had occasion to order an election in a unit not as broad as "employer unit," yet not necessarily coincident with the phrases "craft unit" or "plant unit"; for example, the "production and maintenance employees" of a given plant.

House amendment no. 12 inserts the phrase "upon due notice" in section 9 (c) providing for hearings by the Board on the issue of collective bargaining representation. The conference agreement accepted this amendment out of abundant caution; though it would perhaps

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be implied that a requirement of a hearing includes due notice to the parties.

House amendment no. 13 was accepted by the conference agreement. It is a purely formal matter. The appropriate term for the intervention of a person in a quasi-judicial person is "intervene" rather than "appear." House amendment no. 14 was accepted by the conference agreement as a verbal change to conform with the preceding amendment.

Section 10 (e) of the Senate bill provided that "if such person fails or neglects to obey such order of the Board while the same is in effect, the Board may" petition any circuit court of appeals, etc. House amendment no. 15 strikes out the quoted phrase and substitutes "The Board shall have power to" petition any circuit court of appeals, etc. The conference agreement accepts this amendment. The purpose is to provide for more expeditious procedure. Delay in enforcement procedure due to technicalities would be especially harmful under this act. It is the purpose of this amendment to authorize the Board to apply to the courts for an enforcement order, without encountering the delay resulting from certain court decisions (a small minority) under the Federal Trade Commission Act, requiring the Commission to show in every case that its order is being disobeyed before the court will even proceed to consider the matter on its merits, or render a decree enforcing the Board's order. As the majority of courts have declared under the Federal Trade Commission Act, neither the administrative body nor the courts are required to assume in the ordinary case that the unlawful practice in question, even though presently terminated will not be resumed in the future. If such practice is resumed there will be immediately available to the Board an existing court decree to serve as a basis for contempt proceedings.

House amendment no. 16 was accepted in the conference agreement as conforming to the language of the Federal Trade Commission Act, in using the language of authorization rather than mandatory language in empowering the court to enter the appropriate decree.

House amendment no. 17 is clarifying language to cover the contingency where the court has occasion to modify an order of the Board. In such case the court is given by the amendment the power to enforce the Board's order as modified, as fully as in the case where the court affirms the Board's order without modification.

[6] The conference agreement accepts House amendment no. 18. This amendment to section 10 (f), applying to a case where a party petitions the Circuit Court of Appeals to review the order of the Board, brings that subsection in conformity with section 10 (e) as amended.

House amendment no. 19, adding the phrase "and enforcing as so modified" to section 10(h) was accepted by the conference agreement as conforming to the changes in the previous amendments.

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The conference agreement accepted House amendments nos. 20, 21, and 22, as constituting merely formal corrections in the citations of the various statutes.

House amendment no. 23 inserted a new section providing that—

> Nothing in this act shall abridge the freedom of speech, or of the press, as guaranteed in the first amendment to the Constitution.

The conference agreement rejected this amendment as having no proper place in the bill. There is no reason why the Congress should single out this provision of the Constitution for special affirmation. The amendment could not possibly have had any legal effect, because it was merely a restatement of the first amendment to the Constitution, which remains the law of the land irrespective of congressional declaration.

House amendments nos. 24 and 25 merely renumbered the sections as made necessary by House amendment no. 23 inserting a new section. Since the conference agreement has stricken out House amendment no. 23, House amendments nos. 24 and 25 become unnecessary and are rejected by the conference agreement.

The conference agreement accepts the House amendment to the title of the bill, because it describes more accurately the jurisdictional basis for the bill.

WILLIAM P. CONNERY, Jr.,
RICHARD J. WELCH,
GLENN GRISWOLD,
ROBERT RAMSPECK,
W. P. LAMBERTSON,
Managers on the part of the House.

CONGRESSIONAL RECORD, SENATE—JUNE 27, 1935

(79th Cong. Rec. 10258)

SETTLEMENT OF LABOR DISPUTES—CONFERENCE REPORT

Mr. WALSH. Mr. President, I ask unanimous consent for the present consideration of the conference report on [10259] Senate bill 1958, the report having been submitted by me yesterday.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1958) to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

The conference report is as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, having met,

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after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its amendments numbered 9, 23, 24, 25.

That the Senate recede from its disagreement to the amendments of the House numbered 1, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and agree to the same.

Amendment numbered 2: That the Senate recede from its disagreement to the amendment of the House numbered 2, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment, insert the following:

"SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce: or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

And the House agree to the same.

Amendment numbered 11: That the Senate recede from its disagreement to the amendment of the House numbered 11, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

"(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

And the House agree to the same.

DAVID I. WALSH,
WM. E. BORAH,
JAMES E. MURRAY,
ROBERT M. LA FOLLETTE, JR.,
LOUIS MURPHY,
Managers on the part of the Senate.
WILLIAM P. CONNERY, JR.,
ROBERT RAMSPECK,
GLENN GRISWOLD,
RICHARD J. WELCH,
W. P. LAMBERTSON,
Managers on the part of the House.

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Mr. WALSH. I move that the report be adopted.

Mr. KING. Mr. President, will the Senator from Massachusetts advise the Senate what changes have been made?

Mr. WALSH. Mr. President, the conference agreement accepted most of the House amendments as constituting merely formal corrections in the citations of the various statutes and other minor changes of phrases and definitions.

House amendment no. 23 inserted a new section providing that nothing in this act shall abridge the freedom of speech, or of the press, as guaranteed in the first amendment to the Constitution." The conference agreement rejected this amendment as having no proper place in the bill. There is no reason why the Congress should single out this provision of the Constitution for special affirmation. The amendment could not possibly have had any legal effect, because it was merely a restatement of the first amendment to the Constitution, which remains the law of the land irrespective of Congressional declaration.

House amendment no. 11, which redrafted section 9 (b), embodied two changes from the Senate bill. The first change undertook to express more explicitly the standards by which the Board is to be guided in deciding what is an appropriate bargaining unit. The conference agreement accepts this part of the amendment. The amendment also added a proviso designed to limit the otherwise broad connotation that might be put upon the phrase "or other unit." The proviso, however, was subject to some misconstructions, and the conferees have agreed that the simplest way to deal with the matter is to strike out the undefined phrase "other unit." It was also agreed to insert after "plant unit" the phrase "or subdivision thereof." This was done because the National Labor Relations Board has frequently had occasion to order an election in a unit not as broad as "employer unit," yet not necessarily coincident with the phrases "craft unit" or "plant unit"; for example, the "production and maintenance employees" of a given plant.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

The PRESIDING OFFICER laid before the Senate the action of the House of Representatives insisting upon its amendment to the title of the bill (S. 1958) to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Mr. WALSH. I move that the Senate concur in the amendment of the House to the title of the bill.

The motion was agreed to.

CONGRESSIONAL RECORD, HOUSE—JUNE 27, 1935

(79th Cong. Rec. 10297)

NATIONAL LABOR RELATIONS BOARD

Mr. CONNERY. Mr. Speaker, I call up the conference report upon the bill (S. 1958) to diminish the causes of labor [10298] disputes burdening or obstructing interstate and foreign commerce, to create

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a National Labor Relations Board, and for other purposes, and ask unanimous consent that the statement be read in lieu of the report.

The SPEAKER. Is there objection?

There was no objection.

Mr. TABER. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. TABER. In the copy of the bill that is available at the Doorkeeper's desk, it appears that the Ramspeck amendment, which was adopted on page 9728 of the RECORD, has not been printed. Does this appear in the engrossed copy of the bill?

Mr. RAMSPECK. It does. That was an error on the part of the printing clerk in the Senate.

The SPEAKER. It appears in the engrossed copy of the bill, House amendment no. 11, page 4.

The Clerk will read the statement.

The Clerk read the statement.

The conference report and statement are as follows:

CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its amendments numbered 9, 23, 24, and 25.

That the Senate recede from its disagreement to the amendments of the House numbered 1, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, and agree to the same.

Amendment numbered 2: That the Senate recede from its disagreement to the amendment of the House numbered 2 and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

"SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing dimunition of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encourag-

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ing the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

And the House agree to the same.

Amendment numbered 11: That the Senate recede from its disagreement to the amendment of the House numbered 11, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

"(b) The Board shall decide in each case whether, in order to insure the employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof."

And the House agree to the same.

WILLIAM P. CONNERY, JR.,
ROBERT RAMSPECK,
GLENN GRISWOLD,
RICHARD J. WELCH,
W. P. LAMBERTSON,
Managers on the part of the House.

DAVID L. WALSH,
ROBERT M. LA FOLLETTE, JR.,
JAMES E. MURRAY,
WM. E. BORAH,
LOUIS MURPHY,
Managers on the part of the Senate.

STATEMENT

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill (S. 1958) to create a National Labor Relations Board, and for other purposes, submit the following statement of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The conference agreement accepts the first House amendment, striking out from the caption to section 1 the words "declaration of", so that the caption now reads "findings and policy." The omitted words were superfluous.

The Senate receded from its disagreement to House amendment no. 2, and the conferees agreed upon the same with minor amendments. The House redrafting of section 1 was thought by the conferees to contain a better statement of the jurisdictional basis of the bill. The conference struck out the words "interstate and foreign" modifying the word "commerce", appearing at four places in the section. The word "commerce" is defined in subsection 4 of section 6 as meaning interstate and foreign commerce. It is therefore confusing to use the adjectives "interstate and foreign" in various places in section 1, especially when these adjectives are not consistently used each time the word "commerce" appears in the section. The slight verbal change at the end of section 1 simply uses the plural to conform to the use in the preceding paragraphs of the section and in conformity with the general statement of rights in section 7.

The conference agreement accepted House amendment no. 3 as constituting a more accurate definition of the term "commerce." As originally defined in subsection 6 of section 2 the term included "any transportation or communication relating thereto." This was thought to be too broad a statement.

House amendment no. 4 effects a minor change in subsection 7 of section 2 by removing a tautological phrase. The idea is preserved in the phrase "tending to lead to a labor dispute", etc. The conference agreement accepts this amendment.

When the Senate passed S. 1958 it was assumed that the bill would become a law before June 16, 1935, on which date the National Labor Relations Board created pursuant to Public Resolution 44, Seventy-third Congress, expired. Meanwhile, the President by a new Executive order of June 15, 1935, reestablished and continued the Board in existence pursuant to his authority under title I of the National Industrial Recovery Act as amended. House amendment no. 5 makes it clear that the term "old Board" as defined in subsection 11 of section 2,

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describes the Board which is at present in existence. This amendment is important in view of the provision at the end of section 4 (b) transferring to the Board to be created by S. 1958 the unexpended funds and appropriations of the old Board. The conference agreement accepts this amendment.

Section 3 (a) of the Senate bill provided: "There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the 'National Labor Relations Board'." House amendment no. 6 strikes out the phrase "as an independent agency in the executive branch of the Government." The Board as contemplated in the bill is in no sense to be an agency of the executive branch of the Government. It is to have a status similar to that of the Federal Trade Commission, which as the Supreme Court pointed out in the Schechter case, is a quasi-judicial and quasi-legislative body. The conference agreement accepts this amendment.

The conference agreement accepts House amendment no. 7, stating specifically the circumstances under which a member of the Board may be removed. This amendment is desirable in the light of the decision of the Supreme Court in *Rathbun* v. *United States*, decided May 27, 1935, involving the removal by the President of Commissioner Humphreys of the Federal Trade Commission. If Congress in creating the Board vests the appointing power in the President, it might be implied that it is intended to vest also in the President a general power of removal as an incident to the power to appoint. This inference is negatived by an express provision stating the conditions under which a member of the Board may be removed. Similar provisions are found in the Railway Labor Act of 1934 and in the Federal Trade Commission Act.

House amendment no. 8 strikes out from section 4 (b) the provision continuing the court proceedings and orders of the old Board. The conference agreement accepts this amendment. All cases of the old Board pending in the courts have already been [10299] dropped at the direction of the Attorney General, in view of the Schechter case, which invalidated the codes of fair competition as having been founded upon an improper delegation of legislative power to the President. Section 7 (a), which was the basis of the old Board's activity, became inoperative, because section 7 (a) was effective only insofar as its provisions were inserted in the codes.

Section 4 (b) of the Senate bill provided that all employees of the old Board should be transferred to and become employees of the Board "without acquiring by such transfer a permanent civil-service status." House amendment numbered 9 proposed to strike out this quoted phrase. The conference agreement rejects the House amendment and reinstates the language of the Senate bill. The result is that all employees of the old Board will be carried over as provided in the Senate bill, but such transfer will not of itself confer a civil-service status upon such employees of the old Board as have not now such status. The conferees thought that employees of the old Board should not be blanketed into the civil service without the usual formalities provided by law.

The conference agreement accepted House amendment no. 10 as constituting a more accurate citation of the National Industrial Recovery Act.

House amendment no. 11, which redrafted section 9 (b), embodied two changes from the Senate bill. The first change undertook to express more explicitly the standards by which the Board is to be guided in deciding what is an appropriate bargaining unit. The conference agreement accepts this part of the amendment. The amendment also added a proviso designed to limit the otherwise broad connotation that might be put upon the phrase "or other unit." The proviso, however, was subject to some misconstructions and the conferees have agreed that the simplest way to deal with the matter is to strike out the undefined phrase "other unit." It was also agreed to insert after "plant unit" the phrase "or subdivision thereof." This was done because the National Labor Relations Board has frequently had occasion to order an election in a unit not as broad as "employer unit," yet not necessarily coincident with the phrases "craft unit" or "plant unit"; for example, the "production and maintenance employees" of a given plant.

House amendment no. 12 inserts the phrase "upon due notice" in section 9 (c) providing for hearings by the Board on the issue of collective bargaining representation. The conference agreement accepted this amendment out of abundant caution, though it would perhaps be implied that a requirement of a hearing includes due notice to the parties.

House amendment no. 13 was accepted by the conference agreement. It is a purely formal matter. The appropriate term for the intervention of a person in a quasi-judicial person is "intervene" rather than "appear." House amendment

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no. 14 was accepted by the conference agreement as a verbal change to conform with the preceding amendment.

Section 10 (e) of the Senate bill provided that "if such person fails or neglects to obey such order of the Board while the same is in effect, the Board may" petition any circuit court of appeals, etc. House amendment no. 15 strikes out the quoted phrase and substitutes "The Board shall have power to" petition any circuit court of appeals, etc. The conference agreement accepts this amendment. The purpose is to provide for more expeditious procedure. Delay in enforcement procedure due to technicalities would be especially harmful under this act. It is the purpose of this amendment to authorize the Board to apply to the courts for an enforcement order, without encountering the delay resulting from certain court decisions (a small minority) under the Federal Trade Commission Act, requiring the Commission to show in every case that its order is being disobeyed before the court will even proceed to consider the matter on its merits, or render a decree enforcing the Board's order. As the majority of courts have declared under the Federal Trade Commission Act, neither the administrative body nor the courts are required to assume in the ordinary case that the unlawful practice in question, even though presently terminated, will not be resumed in the future. If such practice is resumed, there will be immediately available to the Board an existing court decree to serve as a basis for contempt proceedings.

"House amendment no. 16 was accepted in the conference agreement as conforming to the language of the Federal Trade Commission Act, in using the language of authorization rather than mandatory language in empowering the court to enter the appropriate decree.

House amendment no. 17 is clarifying language to cover the contingency where the court has occasion to modify an order of the Board. In such case the court is given by the amendment the power to enforce the Board's order as modified, as fully as in the case where the court affirms the Board's order without modification.

The conference agreement accepts House amendment no. 18. This amendment to section 10 (f), applying to a case where a party petitions the circuit court of appeals to review the order of the Board, brings that subsection in conformity with section 10 (e) as amended.

House amendment no. 19, adding the phrase "and enforcing as so modified" to section 10 (h), was accepted by the conference agreement as conforming to the changes in the previous amendments.

The conference agreement accepted House amendments nos. 20, 21, and 22 as constituting merely formal corrections in the citations of the various statutes.

House amendment No. 23 inserted a new section providing that "Nothing in this act shall abridge the freedom of speech or of the press as guaranteed in the first amendment to the Constitution." The conference agreement rejected this amendment as having no proper place in the bill. There is no reason why the Congress should single out this provision of the Constitution for special affirmation. The amendment could not possibly have had any legal effect, because it was merely a restatement of the first amendment to the Constitution, which remains the law of the land, irrespective of congressional declaration.

House amendments Nos. 24 and 25 merely renumbered the sections as made necessary by House amendment No. 23 inserting a new section. Since the conference agreement has stricken out House amendment No. 23, House amendments Nos. 24 and 25 become unnecessary and are rejected by the conference agreement.

The conference agreement accepts the House amendment to the title of the bill, because it describes more accurately the jurisdictional basis for the bill.

WILLIAM P. CONNERY, Jr.,
RICHARD J. WELCH,
GLENN GRISWOLD,
ROBERT RAMSPECK,
W. P. LAMBERTSON,
Managers on the part of the House.

The SPEAKER. The question is on the adoption of the conference report.

Mr. CONNERY. Mr. Speaker, I yield 5 minutes to the gentleman from Georgia [Mr. RAMSPECK].

Mr. RAMSPECK. Mr. Speaker, there were two matters in this bill in which I was very much interested, one being the making of the

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Board an independent agency, without any connection with the executive department. That is retained in the bill. The other was an amendment limiting the authority of the Board to designate units appropriate for collective bargaining.

We have worked out a compromise with reference to that amendment which accomplishes, in my opinion, exactly the object I had in mind, which is to limit the jurisdiction of the Board in setting up units appropriate for collective bargaining, to plant units, craft units, or employer units, the employer unit being the largest unit constituted.

In this connection I want to pay tribute to the fairness and generosity of the distinguished Chairman of the Committee on Labor [Mr. CONNERY]. [Applause.] I think this House ought to know that although he fought this amendment vigorously on the floor when it was being considered, after it was adopted he insisted and continued to insist that I have a fair opportunity to work out a compromise, and he not only did that but he helped me work it out. A great part of the credit is due to him for the success of this amendment, which I think is in keeping with the spirit of the act, which was to give free determination to the working people of this country. It is satisfactory to everybody involved, and I hope the report will be adopted without any question. [Applause.]

Mr. TABER. Will the gentleman yield?

Mr. RAMSPECK. I yield.

Mr. TABER. Is it not a fact that under the language of the provision as suggested by the conference the craft unit can be as broad as the entire country?

Mr. RAMSPECK. There is some question about that, I will say to the gentleman from New York.

Mr. TABER. Does not that language destroy the beneficial effect of the amendment which the gentleman procured?

Mr. RAMSPECK. I do not think so. The way "craft unit" is generally understood in the labor circles and in labor-union circles, it is such that I do not think it could be stretched to include varying classes of workers, as could have been done under the original language of the bill in the expression "other units." It might possibly take in such things as electrical workers in several different plants under a craft unit, but the Board certainly could not go out and take a group of factories—say, 5 factories in the gentleman's city, 4 of which were organized and 1 of which had declined to organize—and put them all into one unit and force in the employees of the fifth factory against their will.

Mr. TABER. They could, however, put in all of those who belonged to the same craft?

Mr. RAMSPECK. It is possible they might do that, although the Labor Board representative tells me that they do not think that they would do that.

[10300] Mr. TABER. Why should we permit them to do it when we all know it should not be done?

Mr. RAMSPECK. The gentleman has been in many conferences, many more than I have, and the gentleman knows he cannot always get all that he wants, but I am satisfied and I think we have accomplished the real purpose that I had in mind.

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Mr. MEAD. Will the gentleman yield?

Mr. RAMSPECK. I yield.

Mr. MEAD. I really believe that the compromise which the gentleman has worked out will more practically fit the situation to be met by the Labor Board than the original suggestion which the gentleman offered on the floor of the House. Take, for example, the coal miners, spread over a number of States, with the operators themselves organized and working in close harmony one with the other, it would be to the distinct disadvantage of labor if every mine was held as a distinct unit. The proposal which is brought in here will give the Labor Board certain administrative latitude that will enable all of the miners to enjoy a union that will cover the various fields and enable them to give proper and common consideration to their views. I think it is a very good suggestion.

Mr. RAMSPECK. I appreciate the gentleman's views about the matter.

Mr. RICH. Will the gentleman yield?

Mr. RAMSPECK. I yield.

Mr. RICH. In the bill it sets up the fact that manufacturers may not do anything to coerce their employees to join a union. On the other hand, there is nothing in the bill that prohibits radical labor leaders or radical individuals from trying to have employees who are perfectly satisfied in a plant, being compelled to join a union that labor leaders would like to have them join. Why does not the bill contain something like that?

The SPEAKER. The time of the gentleman from Georgia [Mr. RAMSPECK] has expired.

Mr. CONNERY. Mr. Speaker, I yield the gentleman 2 additional minutes.

Mr. RAMSPECK. That matter is not involved in the conference. I do not agree with the gentleman, however, that they can be forced, under this bill, to join any union. There is nothing in the bill which will force anybody to join a union under any circumstances.

Mr. RICH. Then I should like to have the gentleman point that out to me in the bill.

Mr. RAMSPECK. Can the gentleman point out to me where there is anything to force them in?

Mr. TABER. Will the gentleman yield further?

Mr. RAMSPECK. I yield.

Mr. TABER. There is a situation where the closed shop can be forced on them and they can be forced out of their jobs if they do join?

Mr. RAMSPECK. But that has to be agreed to by the employer?

Mr. TABER. Not by their individual employer but only the group.

Mr. RAMSPECK. It has to be agreed to by every employer.

Mr. TABER. Oh, no; not under this.

Mr. LANHAM. Mr. Speaker, will the gentleman yield?

Mr. RAMSPECK. I yield.

Mr. LANHAM. In order to clarify the legislative situation with reference to Senate amendment no. 23, which reads:

> Nothing in this act shall abridge the freedom of speech, or of the press, as guaranteed in the first amendment to the Constitution.

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I call attention to the statement in the conference report:

The conference agreement rejected this amendment as having no proper place in the bill. There is no reason why the Congress should single out this provision of the Constitution for special affirmation. The amendment could not possibly have had any legal effect, because it was merely a restatement of the first amendment to the Constitution, which remains the law of the land irrespective of congressional declaration.

My understanding is that the legislative intent with reference to this measure insofar as the first amendment to the Constitution is concerned is carried out just as effectively by the amendment placed upon this bill in the House as though this amendment had not been stricken out in conference.

Mr. RAMSPECK. I agree with the gentleman absolutely that writing a provision of the Constitution into the bill could not add anything to it, and it ought not to be in the bill; but it is not the intention of this bill to violate any section of the Constitution.

Mr. CONNERY. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. TABER].

Mr. TABER. Mr. Speaker, I want to read the language of the so-called "compromise Ramspeck amendment." It reads as follows:

(b) The board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or plant unit, or subdivision thereof.

Under this provision the board can fix the craft unit as wide as the country, or within particular bounds. There might be a unit in Boston, another in Cleveland, another in Philadelphia, and all three would be bound by the results of the deliberations of the majority.

I do not believe we ought to put the workingmen of this country in any such precarious position, and I do not think this language would at all protect them. I hope the conference report will not be agreed to.

Mr. CONNERY. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER. The question is on the adoption of the conference report.

The question was taken; and on a division (demanded by Mr. TABER) there were—ayes 132, noes 45.

Mr. TABER. Mr. Speaker, I object to the vote on the ground there is not a quorum present.

The SPEAKER. The Chair will count. [After counting.] Two hundred and thirty-two Members are present, a quorum.

Mr. TABER and Mr. BACON asked for the yeas and nays.

The yeas and nays were refused.

So the conference report was adopted.

The SPEAKER. The Clerk will report the amendment in disagreement.

The Clerk read as follows:

Amend the title so as to read: "An act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes."

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Mr. CONNERY. Mr. Speaker, I move that the House insist upon its amendment to the title.

The motion was agreed to.

A motion to reconsider was laid on the table.

CONGRESSIONAL RECORD, HOUSE—JULY 1, 1935
(79 Cong. Rec. 10585)

ENROLLED BILLS SIGNED

* * * * * * *

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 1958. An act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes;

CONGRESSIONAL RECORD, SENATE—JULY 2, 1935
(79 Cong. Rec. 10587)

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Haltigan, one of its enrolling clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice-President:

S. 1958. An act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes;

CONGRESSIONAL RECORD, SENATE—JULY 3, 1935
(79 Cong. Rec. 10688)

ENROLLED BILLS PRESENTED

Mrs. CARAWAY, from the Committee on Enrolled Bills, reported that on the 2d instant that committee presented to the President of the United States the following enrolled bills:

S. 1958. An act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes:

CONGRESSIONAL RECORD, SENATE—JULY 8, 1935
(79 Cong. Rec. 10719)

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Latta, one of his secretaries, who also announced that the President had approved and signed the following acts:

* * * * * * *

On July 5, 1935:

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S. 1958. An act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes; and

[10720] STATEMENT BY PRESIDENT ROOSEVELT ON SIGNING LABOR-DISPUTES BILL

Mr. GUFFEY. Mr. President, I present and ask to have printed in the RECORD the text of a statement issued by President Roosevelt upon signing the so-called "Wagner labor-disputes bill", as printed in the Washington Post of the 6th instant.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

TEXT OF WAGNER BILL STATEMENT

(Public Law 198)

President Roosevelt issued the following statement when he signed the Wagner labor disputes bill yesterday:

"This act defines, as a part of our substantive law, the right of self-organization of employees in industry for the purpose of collective bargaining, and provides methods by which the Government can safeguard that legal right. It establishes a National Labor Relations Board to hear and determine cases in which it is charged that this legal right is abridged or denied, and to hold fair elections to ascertain who are the chosen representatives of employees.

"A better relationship between labor and management is the high purpose of this act. By assuring the employees the right of collective bargaining it fosters the development of the employment contract on a sound and equitable basis. By providing an orderly procedure for determining who is entitled to represent the employees, it aims to remove one of the chief causes of wasteful economic strife. By preventing practices which tend to destroy the independence of labor, it seeks, for every worker within its scope, that freedom of choice and action which is justly his.

"The National Labor Relations Board will be an independent quasi-judicial body. It should be clearly understood that it will not act as mediator or conciliator in labor disputes. The function of mediation remains, under this act, the duty of the Secretary of Labor and of the Conciliation Service of the Department of Labor. It is important that the judicial function and the mediation function should not be confused. Compromise, the essence of mediation, has no place in the interpretation and enforcement of the law.

"This act, defining rights, the enforcement of which is recognized by the Congress to be necessary as both an act of common justice and economic advance, must not be misinterpreted. It may eventually eliminate one major cause of labor disputes, but it will not stop all labor disputes. It does not cover all industry and labor, but is applicable only when violation of the legal right of independent self-organization would burden or obstruct interstate commerce. Accepted by management, labor, and the public with a sense of sober responsibility and of willing cooperation, however, it should serve as an important step toward the achievement of justice and peaceful labor relations in industry."

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S. 1958, Final Print

74th CONGRESS, SESS. 1, CH. 372, JULY 5, 1935
(49 Stat. 449)

[CHAPTER 372.]

AN ACT

To diminish the cause of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers **[450]** of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

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DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

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[451] (11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 [1] approved June 14, 1935.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President, stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

[1] So in original.

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(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease **[452]** to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any

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other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employee as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

[453] (4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertin[1] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order ofthe Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive,

[1] So in original.

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and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing **[454]** or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding,

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including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such addi- **[455]** tional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

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(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated **[456]** or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture

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for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendent or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or **[457]** agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the

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remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

CONGRESSIONAL RECORD, HOUSE—JANUARY 16, 1935

(79 Cong. Rec. 537)

197. By Mr. TRUAX: Also, petition of Local Union No. 1802 of the United Brotherhood of Carpenters and Joiners of America, requesting the Honorable ROBERT F. WAGNER, Senator of the State of New York, to introduce again his labor-disputes bill, in its original form, with certain amendments; and urging Senators and Representatives to support this bill in its amended form as herein suggested; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—JANUARY 17, 1935

(79 Cong. Rec. 630)

230. By Mr. TRUAX: Petition of Local Union No. 231, of the United Mine Workers of America, organized into a bona fide trade union, affiliated with the American Federation of Labor, hereby requesting the Honorable ROBERT F. WAGNER, of the State of New York, to again introduce his labor-disputes bill, in its original form, at the convening session of Congress; to the Committee on Labor.

233. By Mr. TRUAX: Also, petition of Local Union No. 527 of the International Union of Operating Engineers, affiliated with the American Federation of Labor, requesting that Senator ROBERT F. WAGNER, of the State of New York, again introduce his labor-disputes bill in its original form at the convening session of Congress; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—JANUARY 18, 1935

(79 Cong. Rec. 678)

269. By Mr. TRUAX: Petition of the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, New Philadelphia, Ohio, organized into a bona fide trade union, affiliated with the American Federation of Labor, requesting the Honorable ROBERT F. WAGNER, of the State of New York, to again introduce his labor-disputes bill in its original form at the convening session of Congress, urging Members of Congress to support the bill in its amended form; to the Committee on Labor.

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CONGRESSIONAL RECORD, HOUSE—FEBRUARY 8, 1935

(79 Cong. Rec. 1773)

994. By Mr. POLK: Petition of John E. Aeh, secretary of the Boot and Shoe Workers Local, No. 385, and 120 other citizens of Scioto County, Ohio, favoring the 30-hour week with increased wages for all industries; continuance of the National Recovery Administration, especially section 7–A, interpreted to support majority rule; labor representation on all code authorities; the Wagner bill to outlaw company unions; and unemployment insurance so drafted that all without work be eligible, including strikers; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—FEBRUARY 19, 1935

(79 Cong. Rec. 2264)

1621. By Mr. TRUAX: Also, petition of Local Union No. 19085, of the Hardesty Manufacturing Co., New Philadelphia, Ohio, requesting the Honorable ROBERT F. WAGNER, of the State of New York, to again introduce his labor-disputes bill in its original form at the convening session of Congress, and urging their Senators and Representatives to support this bill in its amended form; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—MARCH 14, 1935

(79 Cong. Rec. 3498)

Mr. WALSH also presented a resolution adopted by Branch No. 215 of the Polish Workmen's Aid Fund, of Peabody, Mass., endorsing the so-called Wagner bill, providing for majority rule in collective bargaining, the outlawry of company-promoted unions, etc., which was referred to the Committee on Education and Labor.

CONGRESSIONAL RECORD, SENATE—MARCH 14, 1935

(79 Cong. Rec. 3589)

Mr. WALSH also presented resolutions of Branch No. 82, Polish Workmen's Aid Fund, of Lawrence, and the Quincy Central Labor Union, of Quincy and vicinity, in the State of Massachusetts, endorsing the so-called Wagner bill, providing for majority rule in collective bargaining, the outlawry of company-promoted unions, etc., which were referred to the Committee on Education and Labor.

CONGRESSIONAL RECORD, SENATE—MARCH 29, 1935

(79 Cong. Rec. 4652)

The VICE PRESIDENT laid before the Senate a letter in the nature of a petition from a majority of employees of the Waltham Watch Co., being members of Amalgamated Watch Workers Local Union No. 80, of Waltham, Mass., praying for the passage of the so-called

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Wagner-Connery bill and the Black 30-hour work week bill, which was ordered to lie on the table.

CONGRESSIONAL RECORD, SENATE—MARCH 29, 1935

(79 Cong. Rec. 4653)

Mr. WALSH presented a resolution of the Holyoke (Mass.) Central Labor Union, endorsing the so-called Wagner-Lewis bill and the Black 30-hour work week bill, which was referred to the Committee on the Judiciary.

CONGRESSIONAL RECORD, HOUSE—MARCH 29, 1935

(79 Cong. Rec. 4723)

5863. By Mr. TRUAX: Petition of Local No. 225 of the I. A. of M., Dayton, Ohio, by their recording secretary, David J. Walters, urging support of House bill 6288, known as the Connery disputes bill; to the Committee on Labor.

5864. Also, petition of Local No. 473 of the United Brick and Clay Workers of America, Dover, Ohio, by their secretary, David Reiger, urging their Congressmen to vote for the Wagner-Connery labor-disputes bill now pending in Congress; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—APRIL 1, 1935

(79 Cong. Rec. 4724)

The VICE PRESIDENT also laid before the Senate a resolution adopted by Local Union No. 23, International Jewelry Workers, of Los Angeles, Calif., favoring the passage of the so-called Wagner-Connery bill and the Black 30-hour work week bill, which was referred to the Committee on Education and Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 1, 1935

(79 Cong. Rec. 4826)

6174. By Mr. TRUAX: Petition of Sheet Metal Workers' International Association, Local Union 143, Galion, Ohio, by their secretary, Elza Hiemlich, urging support of the Wagner and Connery bills and the Black 30-hour-week bill; to the Committee on Labor.

6175. Also, petition of organized labor of Massillon and western Stark County, Ohio, by their secretary, Robert J. Siffrin, urging support of the Connery bill; to the Committee on Labor.

6176. Also, petition of United Rubber Workers Federal Labor Union, Local 18319, by their recording secretary, H. C. Anthony, Akron, Ohio, urging support of the Connery labor-disputes bill; to the Committee on Labor.

6177. Also, petition of Milk and Ice-Cream Drivers and Dairy Employees, Local Union 497, Akron, Ohio, urging passage of Wagner labor bill; to the Committee on Labor.

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6178. Also, petition of International Association of Machinists, Lodge 463, Newark, Ohio, by their legislative chairman, Ernest F. Thoma, urging support of Wheeler-Rayburn bill for wiping out holding companies, Wagner-Connery labor-disputes bill, and Black 30-hour work week bill; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—APRIL 2, 1935

(79 Cong. Rec. 4828)

Mr. WALSH presented memorials of Joseph Leautt, a citizen of the State of Massachusetts, remonstrating against the enactment of Senate bill 1958, the so-called Wagner labor relations bill, and Senate bill 87, the so-called Black 30-hour work week bill, which were referred to the Committee on Education and Labor.

He also presented a resolution adopted by members of Local Union No. 43, United Textile Workers of America, Adams, Mass., favoring extension of the National Industry Recovery Act, and also the enactment of certain pending labor legislation, which was referred to the Committee on Finance.

CONGRESSIONAL RECORD, SENATE—APRIL 3, 1935

(79 Cong. Rec. 4897)

Mr. CAPPER presented letters in the nature of petitions from the Central Labor Union, by W. E. Jones, recording secretary, of Kansas City, and Subordinate Lodge, No. 706, International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America, by Harry Shaubell, secretary, of Coffeyville, both in the State of Kansas, praying for the enactment of the so-called Wagner labor-disputes bill and the Black 30-hour week bill, which were referred to the Committee on Education and Labor.

He also presented a petition of sundry employees of the Missouri Pacific Railroad Co., of Hoisington, Kans., praying for the enactment of the so-called Wagner labor-disputes, which was referred to the Committee on Education and Labor.

Mr. WALSH presented a letter in the nature of a petition from Miss Grace D. Faulkner, secretary, Branch 12, A. F. H. W., of Northampton, Mass., praying for the enactment of the so-called Wagner labor-disputes bill, which was referred to the Committee on Education and Labor.

He also presented a petition of sundry citizens of the State of Massachusetts, praying for the enactment of so-called labor-disputes bill, which was referred to the Committee on Education and Labor.

He also presented a letter in the nature of a memorial from W. E. Buck, president of the Worcester Manufacturers Mutual Insurance Co., of Worcester, Mass., remonstrating against the enactment of Senate bill 1958, known as the national labor-relations bill, which was referred to the Committee on Education and Labor.

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CONGRESSIONAL RECORD, HOUSE—APRIL 3, 1935

(79 Cong. Rec. 4979)

6298. By Mr. PFEIFER: Petition of the Malt-Diastase Co., Brooklyn, N. Y., concerning the Wagner labor disputes bill; to the Committee on Labor.

6300. Also, petition of the Association of Employees, long-lines department, American Telephone & Telegraph Co., Branch No. 1, New York, concerning the National Labor Relations Act; to the Committee on Labor.

6302. Also, petition of the Warner Publications, Inc., New York City, concerning the Wagner labor bill (S. 1958); to the Committee on Labor.

6304. Also, petition of the Topics Publishing Co., New York City, concerning the Wagner bill; to the Committee on Labor.

6308. By Mr. RUDD: Petition of the Malt-Diastase Co., Brooklyn, N. Y., concerning the Wagner labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 4, 1935

(79 Cong. Rec. 5090)

6674. By Mr. TRUAX: Petition of International Association of Machinists, Lodge No. 463, Newark, Ohio, by their recording secretary Clarence R. Young, urging support of the Wagner-Connery labor-disputes bill and the Black 30-hour work-week bill; to the Committee on Labor.

6675. Also, petition of the Toledo Central Labor Union, Toledo, Ohio, by their secretary, Otto W. Brach, urging support of the national labor relations bill, introduced by Senator WAGNER, of New York, which creates a new board to supersede the present board, as they believe that section 7a can only be enforced if company unions are outlawed, or union discrimination by employers prevented through the enactment of the Wagner and Connery labor-disputes bill; to the Committee on Labor.

6678. Also, petition of Painters, Decorators, and Paperhangers of America, Local No. 7, Toledo, Ohio, by their recording secretary, C. E. Thomas, urging support to retain the National Recovery Act, and retain therein code provisions, hours, wages, and section 7a, as they believe this will mean increased employment and better living conditions for the working class; to the Committee on Labor.

6679. Also, petition of Painters, Decorators, and Paperhangers of America, Local No. 7, Toledo, Ohio, by their recording secretary, C. E. Thomas, urging support of the Wagner-Connery labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 5, 1935

(79 Cong. Rec. 5176)

6741. By Mr. TRUAX: Petition of the United Rubber Workers Federal Labor Union, Goodrich Local 18310, Akron, Ohio, by their recording secretary, H. C. Anthony, urging support of the Wagner-Connery labor disputes bill; to the Committee on Labor.

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CONGRESSIONAL RECORD, HOUSE—April 5, 1935

(79 Cong. Rec. 5177)

6742. Also, petition of India Rubber Workers Local No. 18346, Mogadore, Ohio, by their executive committee, urging full cooperation and support of the Wagner-Connery bills, as they feel that this legislative measure is necessary for the maintenance of peace and welfare throughout the country; to the Committee on Labor.

6743. Also, petition of Local Union No. 48, of Bricklayers, Masons, and Plasterers, International Union of America, by their secretary, Guy Z. Born, New Philadelphia, Ohio, urging support of Wagner and Connery bills, containing provisions regarding labor disputes; to the Committee on Labor.

6744. Also, petition of Die Sinkers Lodge, No. 1010, Cleveland, Ohio, by their secretary, B. O. Moore, respectfully urging support of House bill 6288, known as the Connery labor-disputes bill, as the passage of this bill means a great deal to the workers affiliated in this union, which is 100 percent organized in this district; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 6, 1935

(79 Cong. Rec. 5203)

6758. By Mr. PFEIFER: Petition of the Smith Bros. Publishers, Inc., New York, concerning the Wagner bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 8, 1935

(79 Cong. Rec. 5204)

6767. By Mr. TRUAX: Petition of the International Brotherhood of Electrical Workers, Local Union, No. 38, Cleveland, Ohio, by their secretary, Clayton R. Lee, urging the support of the Wagner disputes bill, the Black 30-hour-week bill, and the Sweeney amendment to the Housing Act; to the Committee on Labor.

6768. Also, petition of the Springfield Township Relief Association, Inc., Sawyerwood, Ohio, by their secretary, Ralph R. Milhoan, resolving that this association go on record as favoring the Wagner bill; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—APRIL 8, 1935

(79 Cong. Rec. 5207)

Mr. CAPPER presented papers in the nature of petitions from Lodge No. 1308, International Association of Mechanics, of Wichita, and Straw Board Workers Union, No. 19367, of Hutchinson, both in the State of Kansas, favoring the enactment of the so-called Wagner labor-disputes bill, which were referred to the Committee on Education and Labor.

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CONGRESSIONAL RECORD, SENATE—APRIL 8, 1935

(79 Cong. Rec. 5208–5209)

Mr. WAGNER. I ask unanimous consent to have printed in the RECORD a communication I have received from the Council of Shoe manufacturers, which represents 17 large shoe manufacturers in Greater New York, favoring the so-called Wagner disputes bill now pending before the Senate Committee on Education and Labor.

There being no objection, the communication was referred to the Committee on Education and Labor and ordered to be printed in the RECORD, as follows:

COUNCIL OF SHOE MANUFACTURERS
OF GREATER NEW YORK, INC.,
New York, April 3, 1935.

Hon. ROBERT F. WAGNER,
United States Senate, Washington, D. C.

DEAR SENATOR: The 17 shoe manufacturers of this association heartily approve and are in accord with the Wagner disputes bill now pending before the Senate.

We believe that the enactment of this bill will tend to eliminate the strife existing between labor and industry.

Very truly yours,

COUNCIL OF SHOE MANUFACTURERS
OF GREATER NEW YORK, INC.,
By BENJAMIN SCHWARTZ, *President.*

CONGRESSIONAL RECORD, HOUSE—APRIL 8, 1935

(79 Cong. Rec. 5283)

6776. By Mr. DUFFY of Ohio: Petition of Horace C. Crosby, financial secretary of International Association of Machinists, Lodge No. 105, and 68 other citizens of Toledo, Ohio, urging the support of Senate bill 87, known as the Black 30-hour-week bill, and the Connery labor-dispute bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 8, 1935

(79 Cong. Rec. 5284)

6797. By Mr. PFEIFER: Petition of the Associated Cooperage Industries of America, Inc., St. Louis, Mo., concerning the extension of the National Industrial Recovery Act, the Wagner labor-disputes bill, and the 30-hour-week bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 9, 1935

(79 Cong. Rec. 5359)

6860. By Mr. TRUAX: Petition of Women's Non-Partisan Club of Howland, Ohio, by their president, Eva A. Fuller, endorsing the national labor-relations bill, as they believe it to be in the interest of American labor and humanity; to the Committee on Labor.

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6862. Also, petition of Elmer C. O'Dowd and 185 other citizens of Newark, Ohio, urging the support of House bill 6288, known as the Connery labor-disputes bill, and Senate bill 87, known as the Black 30-hour-week bill, and will stand for no compromise; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 10, 1935

(79 Cong. Rec. 5394)

6901. By Mr. TRUAX: Petition of F. W. Griffith, and numerous other citizens of Toledo, Ohio, urging support of Senate bill 87, known as the Black 30-hour-week bill, and the Connery labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—APRIL 11, 1935

(79 Cong. Rec. 5408)

Mr. CAPPER presented a memorial of sundry citizens of McPherson, Kans., remonstrating against the enactment of the so-called Wagner labor-disputes bill, which was referred to the Committee on Education and Labor.

CONGRESSIONAL RECORD, SENATE—APRIL 12, 1935

(79 Cong. Rec. 5483)

Mr. LONERGAN (for Mr. MALONEY) presented memorials, numerously signed, from members of the Telephone Employees Association of Connecticut and of the Southern New England Telephone Co., remonstrating against inclusion of the words "or contribute financial or other support to it," appearing in section 8, paragraph 2, page 8, lines 20 and 21 of Senate bill 1958, known as the Wagner labor-disputes bill, which were referred to the Committee on Education and Labor.

Mr. COPELAND presented a resolution adopted by the Allied Building Trades Council of Buffalo and vicinity (New York), favoring the enactment of legislation creating an independent semijudicial Federal agency with power to enforce the labor laws, etc., which was referred to the Committee on Education and Labor.

Mr. WALSH presented resolutions of Local Union No. 29, of the United Hatters, Cap, and Millinery Workers International Union, of Fall River, and Local No. 11, of the Amalgamated Silver Workers Union, of Taunton, in the State of Massachusetts, favoring the enactment of the so-called Wagner labor-disputes bill and the Black 30-hour work week bill, which were ordered to lie on the table.

CONGRESSIONAL RECORD, HOUSE—APRIL 12, 1935

(79 Cong. Rec. 5577)

7008. By Mr. RUDD: Petition of the Iron Molders' Union, No. 96, of I. M. U. of N. A., Brooklyn, N. Y., concerning the Wagner bill, 30-hour-week bill, and old-age-pension bill; to the Committee on Labor.

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7009. Also, petition of the International Molders' Union of North America, No. 22, Brooklyn, N. Y., concerning the Wagner bill, also the 30-hour-week bill, and old-age-pension bill; to the Committee on Labor.

7014. By Mr. TONRY: Petition of employees of the Pilgrim Laundry, Inc., Brooklyn, N. Y., who reside in the Eighth Congressional District, protesting against the enactment of the Wagner labor-disputes bill or any other similar measure; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 13, 1935

(79 Cong. Rec. 5611)

7034. By Mr. PFEIFER: Petition of Radom & Neidorff, Inc., New York City, concerning the Black 30-hour bill and the Wagner labor-disputes bill; to the Committee on Labor.

7035. Also, petition of the International Molders' Union of North America, Local No. 22, Brooklyn, N. Y., concerning the Wagner bill, the 30-hour-week bill, and the old-age-pension bill; to the Committee on Labor.

7036. Also, petition of Iron Molders' Union, No. 96, Brooklyn, N. Y., concerning the Wagner bill, the 30-hour-week bill, and the old-age-pension bill; to the Committee on Labor.

7038. Also, petition of the Magnuson Products Corporation, Brooklyn, N. Y., concerning the Wagner labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 13, 1935

(79 Cong. Rec. 5612)

7057. By Mr. TRAUX: Petition of the Organization of Street Railway & Motorcoach Employees, Local Division No. 788, of the city of St. Louis, Mo., comprising a membership of 3,300 workers, by their secretary-treasurer, Matthew True, urging support of the Wagner-Connery labor relations bill and the Black-Connery 30-hour bill, as they believe them to be capable of doing much toward the alleviation of the present industrial relationship and increasing employment, both of which are of paramount importance at this time; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 15, 1935

(79 Cong. Rec. 5722, 5723)

7078. By Mr. MCREYNOLDS: Two petitions containing the signatures and addresses of 196 citizens of Chattanooga, Tenn., asking favorable consideration of Congress of the extension of the National Recovery Administration; the Wagner labor disputes bill (S. 6288); the Connery bill (H. R. 6450), labor representation on codes; Connery Resolution No. 141, to prohibit use of Federal arms and supplies during strikes without authority from the Secretary of War; and the Byrns bill (S. 2039), to stop shipment of strikebreakers over State lines during strikes; to the Committee on Labor.

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7082. By Mr. MERRITT of New York: Resolution of Anna Bores, of 656 Vanderbilt Avenue, and 325 additional residents of Brooklyn, appealing to Congress to defeat the Wagner labor-disputes bill; to the Committee on Labor.

7093. By Mr. TRUAX: Petition of the International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, of St. Joseph, Mo., by their secretary, A. R. Hendricks, urging support of the Wagner-Connery labor relations bill (H. R. 1628) and the Black-Connery 30-hour week bill (H. R. 7198); to the Committee on Labor.

7094. Also, petition of the Toledo Federation of Teachers, Local No. 250, by their secretary, George J. Hammersmith, Toledo, Ohio, realizing that the strengthening of section 7 (a) of the National Industrial Recovery Act is essential to the return of prosperity and also that there is a drastic need for an independent National Relations Board with power to enforce its decisions, and also asking support of the Wagner labor-relations bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 16, 1935

(79 Cong. Rec. 5830)

7119. By Mr. MCREYNOLDS: Petition containing the signatures and addresses of 94 citizens of Chattanooga, Tenn., asking favorable consideration of Congress of the extension of the National Recovery Administration; the Wagner labor disputes bill (S. 6288); the Connery bill (H. R. 6450), labor representation on codes; Connery Resolution No. 141, to prohibit use of Federal arms and supplies during strikes without authority from the Secretary of War; and the Byrnes bill (S. 2039), to stop shipment of strike breakers over State lines during strikes; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 17, 1935

(79 Cong. Rec. 5914)

7175. By Mr. MCREYNOLDS: Petition containing the signatures and addresses of 128 citizens of Chattanooga, Tenn., asking favorable consideration of Congress of the extension of the National Recovery Administration; the Wagner labor-disputes bill (S. 6288); the Connery bill (H. R. 6450), labor representation on codes; Connery Resolution No. 141, to prohibit use of Federal arms and supplies during strikes without authority from the Secretary of War; and the Byrnes bill (S. 2039), to stop shipment of strike breakers over State lines during strikes; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—April 18, 1935

(79 Cong. Rec. 5998, 5999)

7225. By Mr. MCREYNOLDS: Petition containing the signatures and addresses of 99 citizens of Chattanooga, Tenn., asking favorable consideration of Congress of the extension of the National Recovery Administration; the Wagner labor-disputes bill (S. 6288); the Connery bill (H. R. 6450), labor representation on codes; Connery Resolution No. 141, to prohibit use of Federal arms and supplies during strikes

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without authority from the Secretary of War; and the Byrnes bill (S. 2039), to stop shipment of strike breakers over State lines during strikes; to the Committee on Labor.

7237. By Mr. TRUAX: Petition of the United Mine Workers of America, Local Union No. 231, Roswell, Ohio, by their recording secretary, Angelo Campo, urging support of the Wagner labor-disputes bill, Black-Connery 30-hour-week bill, and continuance of the National Recovery Administration; to the Committee on Labor.

7238. Also, petition of Local No. 2, International Brotherhood of Electrical Workers, of St. Louis, Mo., by their secretary, Sidney Weise, urging support of House bill 1628, known as the Wagner-Connery labor-relations bill, and House bill 7198, the Black-Connery 30-hour-week bill; to the Committee on Labor.

7241. Also, petition of the United Appliance Union, Local No. 18652, Toledo, Ohio, by their secretary, Ruby Rittgus, asking support of the Wagner labor-disputes bill and for the continuance of the National Recovery Act; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—APRIL 19, 1935

(79 Cong. Rec. 6001)

Mr. WALSH presented letters in the nature of memorials from Kalashian Bros., Inc., of Worcester, and the Pittsfield Chamber of Commerce, both in the State of Massachusetts, remonstrating against the enactment of the so-called Black 30-hour work week bill, and the Wagner labor-disputes bill, which were ordered to lie on the table.

He also presented letters in the nature of petitions from Local Union No. 2056, United Textile Workers of America, of Uxbridge; and Local No. 86, Moving Picture Machine Operators, of Springfield, both in the State of Massachusetts, praying for the enactment of the so-called Black 30-hour work week bill and the Wagner labor-disputes bill, which were ordered to lie on the table.

CONGRESSIONAL RECORD, HOUSE—APRIL 19, 1935

(79 Cong. Rec. 6098)

7251. By Mr. MCREYNOLDS: Petition containing the signatures and addresses of 99 citizens of Chattanooga, Tenn., asking favorable consideration of Congress of the extension of the National Recovery Administration; the Wagner labor-disputes bill (S. 6288); the Connery bill (H. R. 6450), labor representation on codes; Connery resolution No. 141, to prohibit use of Federal arms and supplies during strikes without authority from the Secretary of War; and the Byrnes bill (S. 2039), to stop shipments of strikebreakers over State lines during strikes; to the Committee on Labor.

7255. By Mr. PFEIFER: Petition of the Permatex Co., Inc., Sheepshead Bay, N. Y., its officers and employees, concerning the Wagner labor-disputes bill; to the Committee on Labor.

7257. Also, petition of Arbuckle Bros., New York, concerning the Wagner labor-disputes bill; to the Committee on Labor.

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7262. Also, petition of the Rockwood & Co., Brooklyn, N. Y., concerning the Wagner labor-disputes bill; to the Committee on Labor.

7264. Also, petition of Fairchild Sons, morticians, Brooklyn, N. Y., concerning the Wagner labor-disputes bill; to the Committee on Labor.

7268. Also, petition of the American Manufacturing Co., Brooklyn, N. Y., concerning the Wagner labor-disputes bill; to the Committee on Labor.

7270. Also, petition of the Gleason-Tiebout Glass Co., Brooklyn, N. Y., concerning the Wagner labor-disputes bill; to the Committee on Labor.

7278. By Mr. TRUAX: Petition of the Association of Employees, long lines department, the American Telephone & Telegraph Co., Branch 217, Bogart, Ohio, by their chairman, E. J. Gasser, approving the proposed National Labor Relations Act (S. 1958 and H. R. 6288) as originally drawn up; also showing interest in regard to section 8, paragraph 2, of this bill; and favoring this section and paragraph in its original form; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 22, 1935

(79 Cong. Rec. 6177, 6178)

7298. By MR. MCREYNOLDS: Petition signed by members of the Boot and Shoe Repair Local No. 620, Chattanooga, Tenn., urging early passage of the Wagner labor disputes bill; to the Committee on Labor.

7303. By Mr. PFEIFER. Petition of National Seal Co., Inc., Brooklyn, N. Y., concerning the Wagner labor-disputes bill (S. 1958); to the Committee on Labor.

7308. Also, petition of Abraham & Strauss, Inc., Brooklyn, N. Y., concerning the Wagner labor-disputes bill; to theCommittee on Labor.

7314. By Mr. TRUAX. Petition of the organized machinists of Incas County, Toledo, Ohio, numbering approximately 1,500, by their secretary, Clarence E. Martin, urging support of the Wagner-Connery bill, the Guffey bill on mining codes, the amended National Recovery Administration bill, and the Black-Connery 30-hour bill; to the Committee on Labor.

7316. Also, petition of Local Union No. 1431, United Mine Workers of America, Crooksville, Ohio, by their president, James A. White, requesting and urging support of Guffey coal-stabilization bill, Wagner labor-disputes bill, 30-hour week bill, and social-securities legislation; to the Committee on Labor.

7317. Also, petition of Local No. 170, N. F. P. O. C., Toledo, Ohio, by their secretary, Bernard W. Heinl, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

7318. Also, petition of the Toledo Mailers Union, No. 35, Toledo, Ohio, by their secretary, Oscar Saffron, urging support of the Wagner labor-disputes bill and the Connery 30-hour week bill; to the Committee on Labor.

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CONGRESSIONAL RECORD, SENATE—APRIL 23, 1935

(79 Cong. Rec. 6179)

Mr. COPELAND presented a resolution adopted by the Canastota (N. Y.) Chamber of Commerce, protesting against the enactment of the so-called "Wagner labor-disputes bill", which was referred to the Committee on Education and Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 23, 1935

(79 Cong. Rec. 6261)

7422. By Mr. PFEIFER. Petition of the Continental Undergarment Co., Brooklyn, N. Y., concerning the Wagner labor-disputes bill (S. 1958); to the Committee on Labor.

7429. By Mr. TRUAX. Petition of the Joint Council of Teamsters, Local 44 (consisting of Teamsters and Chauffeurs, Local 20, Milk Drivers and Dairy Employees, Local 361, Bakery Drivers, Local 365, and Taxi Drivers, Local 494), Toledo, Ohio, by their secretary, Frank J. Randall, urging support of House bill 7172, known as the Mead substitute bill, also House bill 6990 which provides for a 40-hour week for all postal employees, also favoring the Wagner labor disputes bill; to the Committee on the Post Office and Post Roads.

CONGRESSIONAL RECORD, SENATE—APRIL 14, 1935

(79 Cong. Rec. 6262)

Mr. WALSH. presented a letter in the nature of a petition from Local Union No. 2420, United Textile Workers of America, of Worcester, Mass., praying for the enactment of the so-called Wagner labor disputes bill, the Black 30-hour work week bill, and also legislation limiting the use of Federal military equipment in strike situations, which was referred to the Committee on Education and Labor.

He also presented a resolution adopted by Wire Workers' Union, No. 19859, of Worcester, Mass., favoring the enactment of the so-called Black 30-hour work week bill and the Wagner labor-disputes bill, which was ordered to lie on the table.

CONGRESSIONAL RECORD, HOUSE—APRIL 24, 1935

(79 Cong. Rec. 6344)

7485. By Mr. DARROW: Memorial of the Philadelphia Board of Trade, opposing the Wagner labor-disputes bill; the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—APRIL 25, 1935

(79 Cong. Rec. 6345, 6346)

Mr. WALSH presented letters in the nature of petitions from Local Union No. 2401, of Charlton City, and Local Union No. 2325, of North Oxford, both of the United Textile Workers of America, in the State

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of Massachusetts, praying for the enactment of the so-called Wagner labor-disputes bill and the Black 30-hour work week bill, which were referred to the Committee on Education and Labor.

He also presented a resolution adopted by the Springfield (Mass.) Chamber of Commerce, protesting against the enactment of the so-called Wagner labor-disputes bill, which was referred to the Committee on Education and Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 25, 1935

(79 Cong. Rec. 6441)

7622. By Mr. TRUAX. Petition of Local Union 7070 of the United Mine Workers of America, New Philadelphia, Ohio, by their secretary, Lawrence Minnis, urging support of the Guffey coal bill, Wagner labor-disputes bill, and the Black 30-hour week bill; to the Committee on Labor.

7624. Also, petition of Local 1418, United Mine Workers of America, New Philadelphia, Ohio, by their secretary, Joseph Walker, urging support of the Guffey coal bill, the Wagner labor-disputes bill, and the Black 30-hour-week bill; to the Committee on Labor.

7626. Also, petition of the United Textile Workers of America, Cleveland, Ohio, by their secretary, Theo. R. Longmire, urging support of the Wagner labor-disputes bill; Connery bill, providing labor representation on codes; Connery resolution No. 141, to prohibit use of Federal arms and supplies during strikes; and Byrnes bill, S. 2039, stopping shipment of strikebreakers over State lines during strikes; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—APRIL 29, 1935

(79 Cong. Rec. 6506)

The VICE PRESIDENT also laid before the Senate a letter in the nature of a petition from the chairman of the board of directors of the Inland Employees' Association, Dayton, Ohio, praying, on behalf of approximately 1,450 employees of the Inland Manufacturing Co., for the prompt enactment of the so-called Wagner labor-disputes bill, which was referred to the Committee on Education and Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 29, 1935

(79 Cong. Rec. 6600)

7990. By Mr. PFEIFER: Petition of New York Typographical Union, No. 6, New York City, concerning the national labor-relations bill; to the Committee on Labor.

7996. By Mr. SCHAEFER: Petition of members of labor organizations, Belleville, Ill., urging enactment of the Wagner labor-disputes bill; to the Committee on Labor.

8000. By Mr. TRUAX: Petition of Milk Drivers and Dairy Employees, Local 361, Toledo, Ohio, by their business representative, E. J. Haumesser, urging passage of the Wagner-Connery labor-disputes bills, the Guffey bill on mining codes, and S. 87, by Senator

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BLACK, providing for a 30-hour work week in industry, also favoring the continuation of the National Industrial Recovery Act which expires June 15, as it is necessary to retain the code provisions for hours and wages because they represent a definite move in the right direction and believing that it seems certain that unless the gains already effected through the National Recovery Administration codes can be made permanent through the continuation of the National Industrial Recovery Act that labor will receive a serious set-back; to the Committee on Labor.

8001. Also, petition of United Brotherhood of Carpenters and Joiners of America, Ladies Auxiliary, Toledo, Ohio, by their secretary, Mrs. Ida M. Gilger, urging support of House bills 7172 and 6990, the Wagner bill, the Connery bill, and the continuation of the National Recovery Act; to the Committee on Labor.

8002. Also, petition of International Hod Carriers' Building and Common Laborers' Union of America, Local 498, Massillon, Ohio, by their secretary, Claude R. Kramer, urging support of the Wagner-Connery labor-disputes bills, the Guffey bill on mining codes, the amended National Recovery Act, and S. 87 providing for the 30-hour week in industry; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—APRIL 30, 1935

(79 Cong. Rec. 6667, 6668)

8164. By Mr. JOHNSON of Texas: Petition of John O. Chumney, of Irene, and Clyde Tomlinson, secretary of Smith & Tomlinson, Hillsboro, Tex., opposing the Wagner labor bill (S. 1958); to the Committee on Labor.

8172. By Mr. LESINKI: Resolution of Joint Council of Women's Auxiliaries, organization composed of women relatives of members of the trade unions in St. Louis, Mo., urging support of the Wagner-Connery labor relations bill and also the Black-Connery 30-hour-week bill; to the Committee on Labor.

8191. By Mr. TRAUX: Petition of the Toledo Typographical Union, of Toledo, Ohio, by their secretary, Roy G. Woolford, requesting the support of the Wagner labor-disputes bill; to the Committee on Labor.

8192. Also, petition of the Joint Council of Women's Auxiliaries of St. Louis, Mo., by their secretary, Mrs. R. E. McClanahan, requesting support of the Wagner-Connery labor-relations bill and the Black-Connery 30-hour-week bill; to the Committee on Labor.

8194. Also, petition of the United Association of Journeymen Plumbers and Steam Fitters, Local No. 268, of St. Louis, Mo., by their secretary, G. A. Richards, requesting the passage of the Wagner-Connery labor-relations bill and the Black-Connery 30-hour-week bill, because they feel sure if these bills are passed they will be a great help in securing employment; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—MAY 1, 1935

(79 Cong. Rec.. 6747)

8201. By Mr. TRUAX. Petition of the Packers and Wrappers Union, Local 19499, of Cleveland, Ohio, by their secretary, Herbert Schranfl, requesting support of the Wagner-Connery labor-disputes

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bill, the Black-Connery 30-hour-week bill, and the amended National Recovery Administration expires in June of 1935 and section 7 (a) of the present National Recovery Act has proven inadequate and it is necessary to further reduce the hours of labor in order to reemploy some of the millions of unemployed; to the Committee on Labor.

8204. Also, petition of United Mine Workers, Local Union 1486, of Lore City, Ohio, by their secretary, A. Lystak, requesting the support of the Guffey coal bill, the Wagner bill, and the Black-Connery bill, because these bills are of the utmost importance to the miners and coal industry as a whole; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—MAY 2, 1935

(79 Cong. Rec. 6749)

Mr. COPELAND presented the petition of Bearing Workers Association Union, No. 18482, American Federation of Labor, of Syracuse, N. Y., praying for the prompt enactment of the so-called Wagner labor disputes bill, which was ordered to lie on the table.

CONGRESSIONAL RECORD, HOUSE—MAY 2, 1935

(79 Cong. Rec. 6836)

8221. By Mr. TRUAX: Petition of the Amalgamated Association of Iron, Steel, and Tin Workers of North America, Mansfield, Ohio, by David H. Creps, corresponding representative, urging wholehearted support of the Wagner-Connery labor-disputes bill; to the Committee on Labor.

8223. Also, petition of the National Brotherhood of Operative Potters, Tiffin, Ohio, by their secretary, Edison Foght, urging support of the Wagner-Connery labor relations bill; to the Committee on Labor.

8225. Also, petition of the Bakery Drivers Local 28, Springfield, Mo., by their secretary, Harold Roper, urging support of the Wagner-Connery labor relations bill and the Black-Connery 30-hour-week bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—MAY 3, 1935

(79 Cong. Rec. 6941)

8235. By Mr. TRUAX: Petition of the Toledo Women's Trade Union League, Toledo, Ohio, by their secretary, Margaret Brangan, urging support of the Wagner labor disputes bill, as they believe it will mean a strengthening of section 7a by providing more adequate enforcement, the outlawing of company unions, and the fulfillment of the great promise of the new deal to labor of the right to organize and bargain collectively; and favoring the reenactment of the National Recovery Act; to the Committee on Labor.

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CONGRESSIONAL RECORD, SENATE—MAY 7, 1935

(79 Cong. Rec. 7039)

Mr. BACHMAN. I present a petition from citizens of Hamilton County, Tenn., which I ask may be printed in the RECORD, without the names, and appropriately referred. Also, I wish to have it appear in the RECORD that similar requests have been made by 2,155 citizens of the State of Tennessee.

There being no objection, the petition was ordered to lie on the table, and the body thereof to be printed in the RECORD, as follows:

"CHATTANOOGA, TENN., *April 13, 1935.*

"We, the undersigned citizens of Hamilton County, request our Representatives in Congress to vote favorably on the following bills:

"1. Back President in his program of extension of the N. R. A.

"2. Wagner labor-disputes No. 6288.

"3. Connery bill No. 6450, labor representation on the codes.

"4. Connery Resolution No. 141, to prohibit use of Federal arms and supplies during strikes without express authority of the Secretary of War.

"5. Byrnes bill No. 2039, to stop shipment of strikebreakers over the State lines during strikes.

"We request that this petition be read and be made a part of the CONGRESSIONAL RECORD."

CONGRESSIONAL RECORD, HOUSE—MAY 8, 1935

(79 Cong. Rec. 7194)

8317. By Mr. GOODWIN: Petition of the Monticello Chamber of Commerce, Monticello, Sullivan County, N. Y., desiring to go on record as opposing the Wagner labor-disputes bill; to the Committee on Labor.

8324. By Mr. LESINSKI: Resolution of United Automobile Workers Federal Labor Union, No. 18677, respectfully urging the enactment of the Wagner-Connery Labor Relations Act; to the Committee on Labor.

8332. By Mr. RUDD: Petition of pants makers' trade board, Amalgamated Clothing Workers of America, New York City, concerning the continuance of the National Recovery Act and the Wagner labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—MAY 9, 1935

(79 Cong. Rec. 7277, 7278)

8355. By Mr. PFEIFER: Petition of the coat makers trade board of the Amalgamated Clothing Workers of America, concerning continuation of the National Recovery Act and the Wagner labor disputes bill; to the Committee on Labor.

8357. Also, petition of F. H. Von Damm, Brooklyn, N. Y., and its employees, concerning the Wagner labor disputes bill; to the Committee on Labor.

8358. Also, telegram from the pants makers trade board of the Amalgamated Clothing Workers of America, concerning continuance

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of the National Recovery Act and Wagner labor-disputes bill; to the Committee on Labor.

8359. Also, telegram from the vest makers trade board of the Amalgamated Clothing Workers of America, concerning continuance of the National Recovery Act and the Wagner labor disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—MAY 10, 1935

(79 Cong. Rec. 7344)

8392. By Mr. PFEIFER: Telegram from the New York Clothing Cutters Union, Amalgamated Clothing Workers of America, New York City, concerning the Wagner labor-disputes bill and continuance of the National Recovery Act; to the Committee on Labor.

8394. By Mr. RUDD: Petition of New York Clothing Cutters Union, Vest Makers and Coat Makers Amalgamated Clothing Workers of America, concerning the Wagner disputes bill; to the Committee on Labor.

8402. By Mr. TRUAX: Petition of Quarry Workers' International Union of North America, Lakeside, Ohio, by their corresponding secretary, F. J. Schroeder, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—MAY 13, 1935

(79 Cong. Rec. 7431)

8423. By Mr. LAMBERTSON: Petition signed by the citizens of Topeka, Kans., urging support of the so-called Wagner Labor Disputes Act; to the Committee on Labor.

8425. By Mr. MAPES: Petition of Fred C. Correll and others of Grand Haven, Mich., recommending the passage of the Wagner labor-relations bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—MAY 17, 1935

(79 Cong. Rec. 7781)

8508. By Mr. BOYLAN: Resolution unanimously adopted by the Building Service Employees' International Union, meeting in convention at Chicago, Ill., favoring passage of Senate bill 1958, known as the Wagner Disputes Act; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—MAY 20, 1935

(79 Cong. Rec. 7891)

8534. By Mr. LAMBERTSON: Petition signed by P. W. Stewart and a number of other citizens of Topeka, Kans., urging the defeat of the so-called Wagner Labor Disputes Act; to the Committee on Labor.

8543. By Mr. MAPES: Petition of 53 workers and citizens of Grand Haven, Mich., recommending the passage of the Wagner labor-relations bill as originally drawn without amendments; to the Committee on Labor.

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CONGRESSIONAL RECORD, HOUSE—MAY 21, 1935

(79 Cong. Rec. 7961, 7962)

8550. By Mr. BELL: Petition of Southwestern Bell Telephone Co. employees, protesting against the enactment of the Wagner labor-disputes bill; to the Committee on Labor.

8551. Also, petition of the P. B. X. Installation Plant Chapter of the Southwestern Bell Telephone Employee Association, protesting against enactment of the Wagner labor-disputes bill; to the Committee on Labor.

8552. Also, petition of employees of the Southwestern Bell Telephone Co., St. Louis, Mo., protesting against the enactment of the Wagner labor-relations bill; to the Committee on Labor.

8562. By the SPEAKER: Petition of the convention of Building Service Employees' International Union, favoring the Wagner disputes bill (S. 1958); to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—MAY 22, 1935

(79 Cong. Rec. 8033)

8564. By Mr. BELL: Petition of employees of the Southwestern Bell Telephone Co., Kansas City, Mo., protesting against enactment of Wagner labor-disputes bill; to the Committee on Labor.

8568. By Mr. BOYLAN: Letter from the Allied Printing Trades Council of Greater New York, unanimously endorsing the Wagner-Connery labor-disputes bill; to the Committee on Labor.

8577. By Mr. MERRITT of New York: Petition of Richard Meagher of 6902 Ridge Boulevard, and sundry other residents of Brooklyn, N. Y., expressing disapproval of the passage of the Wagner labor-disputes bill and urging Congress to defeat same; to the Committee on Labor.

8580. By Mr. RUDD: Petition of the American Federation of Labor, concerning the Wagner-Connery labor-disputes bill; to the Committee on Labor.

8581. Also, petition of the Allied Printing Trades Council of Greater New York, concerning the Wagner-Connery labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—MAY 23, 1935

(79 Cong. Rec. 8118)

8597. By Mr. PFEIFER: Petition of the American Federation of Labor, Washington, D. C., concerning the Wagner-Connery labor-disputes bill; to the Committee on Labor.

8598. Also, petition of the Allied Printing Trades Council of Greater New York, concerning the Wagner-Connery labor-disputes bill; to the Committee on Labor.

8601. By Mr. TONRY: Petition of sundry citizens of the Eighth Congressional District of the State of New York, in disapproval of the Wagner labor-disputes bill; to the Committee on Labor.

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CONGRESSIONAL RECORD, HOUSE—MAY 24, 1935

(79 Cong. Rec. 8214)

8624. By Mr. TRUAX: Petition of the Zanesville Federation of Labor, Zanesville, Ohio, by their secretary, Joseph A. Bauer, urging favorable consideration and passage of the Wagner labor-disputes bill, also the Black 30-hour-week bill, the Guffey coal bill, and the reenactment of the National Industrial Recovery Act for a period of 2 years; to the Committee on Labor.

8625. Also, petition of Frigidaire Employees' Committee, representing approximately 10,000 workers of the Frigidaire Corporation at Dayton, Ohio, favoring the Wagner labor-disputes bill which is now before Congress; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—MAY 27, 1935

(79 Cong. Rec. 8289, 8290)

8630. By Mr. BELL: Petition of the Southwestern Bell Telephone Co. employees, Kansas City, Mo., against enactment of Wagner labor-relations bill; to the Committee on Labor.

8631. Also, petition of the Southwestern Bell Telephone Co. Employees' Association, Joplin, Mo., protesting against the enactment of the Wagner labor-relations bill; to the Committee on Labor.

8632. Also, petition of a committee of employees, representatives of the Sheffield Steel Corporation Employees Congress, Kansas City, Mo., protesting against the enactment of the Wagner labor-relations bill; to the Committee on Labor.

8633. Also, petition of employees of the Southwestern Bell Telephone Co., at Sedalia, Mo., protesting against the enactment of the Wagner labor relations bill; to the Committee on Labor.

8635. By Mr. GINGERY: Petition of the Shirt Workers Union, Amalgamated Clothing Workers of America, Curwensville, Pa., urging extension of the National Industrial Recovery Act for 2 years, and favoring the Wagner labor bill; to the Committee on Labor.

8639. By Mr. TRUAX: Petition of the Toledo Photo Engravers' Union, No. 15, Toledo, Ohio, by their corresponding secretary, Ralph Ollvier, urging support of the Wagner labor-disputes bill as the need for a board with power to enforce its decisions is obvious, and the reenactment of the National Industrial Recovery Act in which are included codes limiting work hours in industries; to the Committee on Labor.

8643. Also, petition of Massillon Trades and Labor Assembly, Massillon, Ohio, by their corresponding secretary, Robert J. Siffrin, asking assistance in a move to prevent the building of the proposed Beaver Mahoning Canal, as they are opposed to the building of this canal as they believe it will eventually mean the removal of the steel mills from the Massillon-Canton district, and requesting a favorable vote for the Wagner-Connery bill; to the Committee on Labor.

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CONGRESSIONAL RECORD, HOUSE—May 28, 1935

(79 Cong. Rec. 8361)

8647. By Mr. RUDD: Petition of the Central Trades and Labor Council of Greater New York and vicinity, concerning the Wagner labor-disputes bill and extension of the National Recovery Act; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—May 29, 1935

(79 Cong. Rec. 8416, 8417)

8650. By Mr. DORSEY: Petition of employees of the John Blood & Co., Inc., Philadelphia, Pa., registering their opposition to the Wagner labor-disputes bill; to the Committee on Labor.

8653. By Mr. PFEIFER: Petition of the Central Trades and Labor Council of Greater New York and vicinity, concerning the Wagner labor-disputes bill and extension of the National Recovery Act; to the Committee on Labor.

8657. By Mr. TRUAX: Petition of the Ohio State Federation of Labor, Columbus, Ohio, by their secretary, Thomas J. Donnelly, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—May 31, 1935

(79 Cong. Rec. 8482)

8662. By Mr. BOYLAN. Letter from the members of the United Upholsterers' Union of New York, Local No. 44, affiliated with the American Federation of Labor, favoring the passage of the Wagner labor-disputes bill; to the Committee on Labor.

8663. By Mr. RUDD: Petition of the United Upholsterers' Union, Local 44, New York City, concerning the Wagern labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—June 3, 1935

(79 Cong. Rec. 8604, 8605)

8674. By Mr. BELL: Petition of employed workers of Kansas City, Mo., protesting against the enactment of the Wagner labor-disputes bill, presented by Dr. Ralph E. Duncan; to the Committee on Labor.

8684. By Mr. KENNEY: Resolution of the International Association of Machinists, Terminal Lodge, No. 1154, of Jersey City, N. J., supporting the Wagner labor-disputes bill; to the Committee on Labor.

8687. By Mr. MEAD: Petition of the employees of the General Cable Corporation of Buffalo, N. Y., requesting Congress not to permit the passage of Senate bill 1095, Wagner labor-disputes bill; to the Committee on Labor.

8688. By Mr. PFEIFER: Petition of the Central Union Labor Council of Greater New York, concerning the Wagner labor-disputes bill; to the Committee on Labor.

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8690. Also, telegram from the Bricklayers Union No. 9, Brooklyn, N. Y., Charles Pflaum, secretary, concerning the Wagner labor-disputes bill; to the Committee on Labor.

8691. Also, petition of the United Upholsterers' Union, Local 44, New York, concerning the Wagner labor-disputes bill; to the Committee on Labor.

8692. Also, petition of the Chamber of Commerce of the State of New York, New York City, concerning the Wagner labor-disputes bill; to the Committee on Labor.

8695. By Mr. RUDD: Petition of Brotherhood of Painters, Decorators, and Paperhangers of America, Local Union No. 1035, Jamaica, N. Y., P. Kizenberger, recording secretary, South Ozone Park, Long Island, N. Y., concerning the Wagner labor-disputes bill; to the Committee on Labor.

8696. Also, petition of Bricklayers Union No. 9, Brooklyn, N. Y., Charles Pflaum, secretary, Brooklyn, N. Y., concerning the Wagner labor-disputes bill; to the Committee on Labor.

8700. By Mr. TRUAX: Petition of Bricklayers' and Masons' International Union, No. 37, Sandusky, Ohio, by their secretary, Leonard H. Ferback, urging support of the Wagner labor-relations bill and the Black-Connery 30-hour-week bill; to the Committee on Labor.

8701. Also, petition of H. N. Smith, recording secretary of the United Brotherhood of Carpenters and Joiners of America, Springfield, Ohio, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—JUNE 4, 1935

(79 Cong. Rec. 8608)

Mr. WALSH presented a resolution adopted by a meeting of the Bookbinders Joint Conference Board, of Boston and vicinity, in the State of Massachusetts, favoring the enactment of the so-called Wagner labor-disputes bill and the Black-Connery 30-hour work-week bill, which was ordered to lie on the table.

CONGRESSIONAL RECORD, HOUSE—JUNE 4, 1935

(79 Cong. Rec. 8663)

8722. By Mr. TRUAX: Petition of International Union of Operating Engineers, Akron, Ohio, by their secretary, N. F. King, urging support of the Wagner-Connery labor-disputes bill; to the Committee on Labor.

8724. Also, petition signed by 118 members of Cement Workers' Union, No. 18457, White Cottage, Ohio, by their president, K. N. McCoy, urging support of the Wagner-Connery labor-relations bill and the Black-Connery 30-hour-week bill, also passage of social-security program; to the Committee on Labor.

8725. Also, petition of International Association of Bridge, Structural and Ornamental Iron Workers, Dayton, Ohio, by their secretary, Woodford Riley, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

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CONGRESSIONAL RECORD, HOUSE—JUNE 6, 1935

(79 Cong. Rec. 8819)

8741. By Mr. DRISCOLL: Petition of businessmen and manufacturers of Elk County, Pa., giving definite objections to provisions of the labor-relations bill, introduced by Senator Wagner to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—JUNE 7, 1935

(79 Cong. Rec. 8921)

8771. By Mr. TRUAX: Petition of the United Rubber Workers' Federal Labor Union, Akron, Ohio, by Clyde C. Conley and numerous others, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

8772. Also, petition of the Brotherhood of Railway and Steamship Clerks, Harmony Lodge, No. 36, Cleveland, Ohio, by their recording secretary, D. D. Bolton, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

8773. Also, petition of Local Union No. 501, United Brick and Clay Workers, New Philadelphia, Ohio, by Adrian Rausch, urging support of the Wagner labor-disputes bill, Black 30-hour-week bill, Guffey coal-regulation bill, and extension of the National Recovery Act for 2 years; to the Committee on Labor.

8774. Also, petition of Stove Mounters' Local 16, Newark, Ohio, by W. H. Frankenberry and numerous others, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

8775. Also, petition of Cement Workers' Union, No. 18457, White Cottage, Ohio, by their corresponding secretary, Louis E. Moyer, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

8777. Also, petition of the International Union of Operating Engineers, Local Union No. 10, Toledo, Ohio, by their corresponding secretary, S. A. Bloom, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

8778. Also, petition of Tile Layers' Local No. 36, Cleveland, Ohio, by their secretary, Bert Hodgson, urging support of the Wagner disputes bill and the Connery 30-hour-week bill; to the Committee on Labor.

8780. Also, petition of Welders' Local 1357, Dayton, Ohio, by their secretary, Robert N. Eisner, urging support of the Wagner labor-relations bill; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—JUNE 10, 1935

(79 Cong. Rec. 8922)

The VICE PRESIDENT laid before the Senate a letter in the nature of a petition from Local Union No. 511, United Brick and Clay Workers of America, Aden, Ky., praying for the enactment of the so-called Wagner labor-disputes bill, and the extension of the National Industrial Recovery Act, which was ordered to lie on the table.

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CONGRESSIONAL RECORD, HOUSE—JUNE 10, 1935

(79 Cong. Rec. 9030)

8784. By Mr. LAMBERTSON: Petition signed by Raymond McElroy and other citizens of Horton, Kans., asking the support of the Wagner disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—JUNE 12, 1935

(79 Cong. Rec. 9220)

8804. By Mr. AMLIE: Petition of the industrial division of the Beloit Commercial Club, urging the defeat of the labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—JUNE 13, 1935

(79 Cong. Rec. 9254)

8819. By Mr. DARROW: Memorial of the Philadelphia Board of Trade, opposing enactment of the Wagner-Connery labor-relations bill; to the Committee on Labor.

8820. By Mr. DRISCOLL: Petition of O. R. Pang, of Warren, Pa., giving specific criticisms of the labor-disputes bill; to the Committee on Labor.

8827. By Mr. MEAD: Petition of the Intercoastal Lumber Distributors Association, Inc., New York, N. Y., condemning the Wagner labor-disputes bill (S. 1958) and the Connery labor-disputes bill (H. R. 6288) as calculated to force upon the United States a condition of state capitalism, etc., to the Committee on Labor.

8832. By Mr. TRUAX: Petition of the Cleveland Joint Board International Ladies Garment Workers Union, by their secretary, N. Solomon, Cleveland, Ohio, urging support of the Wagner labor-disputes bill, the Black 30-hour-week bill, and the Guffey coal bill; to the Committee on Labor.

8833. Also, petition of Cleveland Local No. 180 of Paper and Corrugated Box Workers, Cleveland, Ohio, by their secretary, Pauline Maezer, urging support of the Wagner labor-disputes bill and all other labor legislation beneficial to workers; to the Committee on Labor.

8834. Also, petition of the Chemical Workers Union 19019, Barberton, Ohio, by their president, A. P. Lee, urging support of the Wagner labor-disputes bill and the Black 30-hour-week bill; to the Committee on Labor.

8835. Also, petition of Local 19114, Canton, Ohio, by their recording secretary, Charles B. May, urging support of the Wagner disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—JUNE 14, 1935

(79 Cong. Rec. 9348)

8845. By Mr. MEAD: Petition of the Manufacturing Chemists' Association of the United States, requesting that Congress oppose the enactment of the Wagner labor-relations bill; to the Committee on Labor.

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8851. By Mr. TRUAX: Petition of Hardrubber Workers' Local Union No. 18395, Akron, Ohio, by their secretary, Paul Langbein, urging support of the Wagner-labor-disputes bill; to the Committee on Labor.

8852. Also, petition of Local Union No. 156, United Association of Journeymen Plumbers and Steam Fitters, Akron, Ohio, by their recording secretary, Leo H. Samples, urging support of the Wagner-Connery labor-disputes bill; to the Committee on Labor.

8853. Also, petition of the New York Progressive Club, New York City, by their secretary, Herman H. Heinzer, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—JUNE 15, 1935

(79 Cong. Rec. 9411)

8862. By Mr. PFEIFER: Petition of Edward White, president New York Photo Engravers' Union, No. 1, concerning the Wagner-Connery bill; to the Committee on Labor.

8863. Also, petition of Mailers' Union, No. 6, International Typographical Union, New York City, concerning the Wagner labor-disputes bill; to the Committee on Labor.

8865. By Mr. RUDD: Petition of New York Photo Engravers' Union, No. 1, New York City, concerning the Wagner-Connery labor-disputes bill; so the Committee on Labor.

8866. Also, petition of Mailers' Union, No. 6, New York City, concerning the Wagner labor-disputes bill; to the Committee on Labor.

8868. By Mr. TRUAX: Petition of Hard Rubber Workers' Local Union, No. 18395, Akron, Ohio, affiliated with the American Federation of Labor, by their financial secretary, J. D. Goberly, urging support of the Wagner-Connery labor-disputes bill; to the Committee on Labor.

8870. Also, petition of the Internationol Brotherhood of Blacksmiths, Drop Forgers, and Helpers, Cleveland, Ohio by their secretary, W. T. Hill, urging support of the Wagner labor-disputes bill, the Black 30-hour-week bill, and Guffey coal-regulation bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—JUNE 18, 1935

(79 Cong. Rec. 9506)

8882. By Mr. TRUAX: Petition of the United Brick and Clay Workers of America, Local Union 473, Strasburg, Ohio, by their financial secretary, Arthur E. Wallick, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

8883. Also, petition of the Carpenters' Local Union 716, Zanesville, Ohio, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

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CONGRESSIONAL RECORD, HOUSE—JUNE 18, 1935

(79 Cong. Rec. 9617)

8886. By Mr. BOYLAN: Letter from Mailer's Union No. 6, of Greater New York, favoring the Wagner labor-disputes bill; to the Committee on Labor.

8888. Also, letter from the New York Progressive Club, composed of members of Local No. 6 of the International Typographical Union, unanimously favoring the passage of the Wagner labor-disputes bill; to the Committee on Labor.

8894. By Mr. RUDD: Petition of the American Federation of Labor, Washington, D. C., concerning the Wagner labor-disputes bill; to the Committee on Labor.

8896. By Mr. TRUAX: Petition of Joseph Snyder and numerous other citizens of Mansfield, Ohio, urging support of Wagner labor-disputes bill and Black 30-hour-week bill; to the Committee on Labor.

8897. Also, petition of Elyria Central Labor Union, by their secretary, Alva Kemp, Elyria, Ohio, urging support of the Wagner labor-disputes bill, Black 30-hour-week bill, and the Guffey coal bill; to the Committee on Labor.

8898. Also, petition of Sheffield Lodge, No. 13, Amalgamated Association of Iron, Steel, and Tin Workers, Kansas City, Mo., urging support of the Wagner labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—JUNE 19, 1935

(79th Cong. Rec. 9742)

8921. By Mr. PFEIFER: Petition of the American Federation of Labor, Washington, D. C., concerning the Wagner labor-disputes bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—JUNE 21, 1935

(79th Cong. Rec. 9899)

8962. Mr. Mr. TRUAX: Petition of the Open Hearth Lodge, No. 148, A. A. I. S. and T. W., Warren, Ohio, by their corresponding representative, Harry Cavender, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

8965. Also petition of Millinery Workers Union Local, No. 44, Cleveland, Ohio, by their secretary, Agnes Willison, urging support of the Wagner labor-disputes bill, the Black 30-hour-week bill, the Guffey coal-regulation bill, and the Mead bill; to the Committee on Labor.

CONGRESSIONAL RECORD, HOUSE—JUNE 24, 1935

(79 Cong. Rec. 10024)

8981. By Mr. TRUAX: Petition of the United Textile Workers of America, Providence, R. I., by their vice president, Horace A. Riviere, urging support of the Wagner-Connery labor-disputes bill; to the Committee on Labor.

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CONGRESSIONAL RECORD, HOUSE—JUNE 27, 1935

(79 Cong. Rec. 10343)

9022. By Mr. TRUAX: Petition of Baker Raulang F. L. U., Local 20,012, Cleveland, Ohio, by their president, Elmer Davis, urging support of the Wagner labor-disputes bill and the Black 30-hour-week bill; to the Committee on Labor.

9024. Also, petition of Local Union 137, A. F. G. W. U., Columbus, Ohio, by their secretary, W. J. Pringle, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

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